

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EERIK HEINE,)

Plaintiff,)

v.)

Civil Action No. 15952

JURI RAUS,)

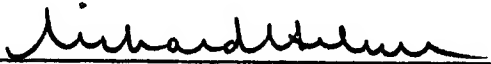
Defendant.)

AFFIDAVIT

Richard Helms, Director of Central Intelligence, first being duly sworn, deposes and says that:

1. In Paragraph 4 of my Affidavit dated February 10, 1969, I stated: "Prior to November 9, 1963, this Agency through confidential intelligence sources available to it received certain information concerning Eerik Heine which was analyzed and evaluated by counterintelligence officers responsible to me, who reached the conclusion that Eerik Heine was a dispatched Soviet intelligence operative, a KGB agent. In the performance of his assigned counterintelligence function, the counterintelligence officer responsible for safeguarding sources of intelligence developed within Estonian emigre groups, acting in accordance with his prescribed duties, instructed Juri Raus to warn members of the Estonian emigre groups that Eerik Heine was a Soviet intelligence operative, a KGB agent."

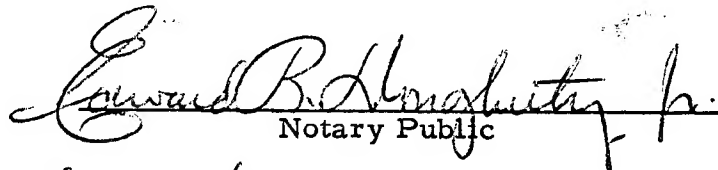
2. The counterintelligence officer referred in the second sentence of the said paragraph 4 was one of the counterintelligence officers referred to in the first sentence of that paragraph.


Richard Helms

STATE OF VIRGINIA)
) ss.
COUNTY OF FAIRFAX)

Subscribed and sworn to before me this 2nd day of _____

April, 1969.


Notary Public

My commission expires 9-24-69.

(SEAL)

CERTIFICATE OF SERVICE

A copy of the foregoing Affidavit of Richard Helms, Director of Central Intelligence, was mailed, postage prepaid, this 3rd day of April, 1969 to Ernest C. Raskauskas, Esq., 1200 Eighteenth Street, N. W., Suite 607, Washington, D. C. 20036 and to Robert J. Stanford, Esq., 1825 K Street, N. W., Suite 707, Washington, D. C. 20006, Attorneys for Plaintiff; and to Paul R. Connolly, Esq., Williams & Connolly, 1000 Hill Building, Washington, D. C. 20006, and E. Barrett Prettyman, Jr., Esq., Hogan & Hartson, 815 Connecticut Avenue, Washington, D. C. 20006, Attorneys for Defendant.

STEPHEN H. SACHS,
United States Attorney,
Attorney for the United States.

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Subject: HEINE v. RAUS - On

JUDGMENT ON DECISION BY THE COURT

CIV 32 (7-63) Remand

United States District Court

FOR THE
District of Maryland

CIVIL ACTION FILE NO. 15952

EERIK HEINE

vs.

JURI RAUS

JUDGMENT

~~This action came on for trial (hearing) before the Court, Honorable ROSZEL C. THOMSEN, Chief Judge, United States District Court, Judge, presiding, and the Court having made the additional, limited inquiry directed by the Fourth Circuit, (Court on decision being heard by the Court)~~
 further
 This action came on for ~~trial~~ (hearing) before the Court, Honorable ROSZEL C. THOMSEN, Chief Judge, United States District Court, Judge, presiding, and the Court having made the additional, limited inquiry directed by the Fourth Circuit,

It is Ordered and Adjudged in accordance with the Opinion of Court,
 filed on the 3rd day of November, 1969, that summary judgment be
 entered in favor of the Defendant, Juri Raus, against the Plaintiff,
 Eerik Heine, for costs. -----

Dated at Baltimore, Maryland, this 3rd day
 of November, 1969.

PAUL R. SCHLITZ
 Clerk of Court
 By: Madeline B. Ransom
 Deputy Clerk

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ERIK HEINE

v.

JURI RAUS

CIVIL NO. 15952

305 F. Supp. 816 (1969)

Filed: *November 3, 1969*

Ernest C. Raskauskas and Robert J. Stanford, of Washington, D.C.,
for plaintiff.

Paul R. Connolly, E. Barrett Prettyman, Jr., and Hogan & Hartson,
of Washington, D.C., for defendant.

Lawrence R. Houston, General Counsel, Central Intelligence Agency,
and Kevin T. Maroney, Attorney, Department of Justice, of Washington,
D.C., and Stephen H. Sachs, United States Attorney, and Barnet D.
Skolnik, Assistant United States Attorney, of Baltimore, Maryland,
for the United States.

Thomsen, Chief Judge

In this action for slander, defendant asserted the de-
fense of absolute privilege on the ground that when he made cer-
tain defamatory statements he was acting within the scope and
course of his employment by the Central Intelligence Agency on
behalf of the United States, and had been instructed by the CIA
to warn members of Estonian emigre groups that plaintiff was a
dispatched Soviet intelligence operative, a KGB agent.

After various proceedings, detailed in the previous opinion
of this Court, 261 F. Supp. 570 (1966), and for the reasons set
out therein, this Court granted defendant's motion for summary
judgment.

On appeal, the Fourth Circuit vacated the judgment and

remanded the case for the narrow purpose set out in its opinion, 399 F.2d 785 (1968).

After summarizing the proceedings in this Court, the Fourth Circuit said: "It [the District Court] was of the opinion that the absolute governmental privilege was available to a government employee such as Raus, who faithfully executed his instructions, as to one of higher authority exercising discretionary functions within the outer perimeter of his authority. We agree, provided the instructions were issued by one having authority to issue them." 399 F.2d at 788.

The Fourth Circuit quoted the discussion of the government's privilege of silence with respect to "state secrets", contained in United States v. Reynolds, 345 U.S. 1, 7-8 (1953), and said: "We affirm the right of the CIA in this case to invoke the governmental privilege against disclosure of state secrets and its allowance, to the extent it was allowed, by the District Court." 399 F.2d at 788.

The Fourth Circuit continued: "On the question of executive privilege in defamation suits, we also agree generally with the District Court, its analysis of Barr v. Matteo [360 U.S. 546] and its reasoning, though we come to the conclusion that one more detail should have been supplied before entry of summary judgment."

After a full discussion of the reasons which led to its conclusion, the Fourth Circuit said:

"We conclude that the absolute privilege is available to Raus if his instructions were issued with the approval of the Director or of a subordinate authorized by the Director, in the subordinate's discretion, to issue such instructions, or if the giving of the instructions was subsequently ratified and approved by such an official.

"Though the Director's affidavits state that

Raus acted under instructions of the CIA, which certainly strongly implies that the instructions were given by, or with the approval of, a responsible, authorized official of the Agency and though the Director's appearance in the case carries with it a strong implication of his personal ratification and approval, it is said that on the present record there is still a permissible inference that the instructions were given by an unauthorized underling and that his action has never had the approval of a responsible official of the Agency having authority to issue or approve such instructions. The inference seems unlikely but we cannot say it is foreclosed by the present record.

"Since summary judgment was issued, we will vacate the judgment so that, if the plaintiff represents to the District Court serious reliance upon the inference, further inquiry may be had and additional findings made. The inquiry should be directed to the identity of the official within the Agency who authorized or approved the instructions to Raus. Disclosure of the identity of the individual who dealt with Raus is not required; the answer to be sought is whether or not the Director or a Deputy Director or a subordinate official, having authority to do so, authorized, approved or ratified the instructions. If such disclosures are reasonably thought by the District Judge to violate the claimed privilege for state secrets, they may be made in camera, to that extent. Disclosures in camera are inconsistent with the normal rights of a plaintiff of inquiry and cross-examination, of course, but if the two interests cannot be reconciled, the interest of the individual litigant must give way to the government's privilege against disclosure of its secrets of state.

"Finally, we may observe that while we generally approve entry of summary judgment for the defendant, subject only to the limited additional inquiry we direct, the plaintiff would fare no better if the defendant's privilege were held to be not absolute, but only qualified. Heine cannot controvert the claim of Raus, supported by the CIA, that he acted under instructions of that Agency. Heine claims no publication exceeding the instructions. He has no basis for a showing of malice. If summary judgment is appropriate after the additional, limited inquiry we direct, it will avoid the necessity of a trial and possible compromise of state secrets which the government is entitled to preserve." 399 F.2d at 791.

Following the remand of the case to this Court, plaintiff stated formally that he "seriously relies upon the inference that the actions and statements of Juri Raus, the defendant, against the plaintiff, were not with the approval of a responsible official of the Agency having authority to issue or approve such instructions". He requested the Court to "permit plaintiff to make further inquiry into said inference, and that additional findings be made".

The Court then held a preliminary conference, at which (1) plaintiff requested that he be permitted to take the deposition of Richard Helms, the Director of the Central Intelligence Agency, in order to establish the factual basis for the inference, and (2) defendant filed an affidavit of the Director, dated February 10, 1969, together with a motion for summary judgment. The Court reviewed the Helms affidavit and suggested that it might be amplified in order to clarify certain statements therein. The defendant and the government agreed to obtain another affidavit from the Director to clarify the questions raised by the Court. At the same hearing the Court directed plaintiff to submit written questions, so that more careful consideration could be given to them both by the Director and by the Court.

On March 19, 1969, plaintiff submitted thirty-five questions on which he wished to take the deposition of the Director. Shortly thereafter defendant filed objections to the proposed questions and an additional affidavit of the Director, dated April 3, 1969, supplementing his affidavit of February 10, 1969. The United States filed a statement on behalf of the Director and the Central Intelligence Agency, advising the Court that it would await the ruling of the Court as to whether any of the proposed questions

would be allowed before determining whether or not it would be necessary for the Director to make an official claim of privilege on the ground of secrecy with respect to any of the information sought to be elicited.

On June 6, 1969, a formal hearing was held on defendant's objections to the questions. After argument, and subject to a further report from the United States as to whether the Director would file a claim of privilege against disclosure of state secrets with respect to any of the proposed questions, and reserving ruling on any such claim of privilege, the Court ruled: (1) that certain questions¹ were within the scope of inquiry directed by the Court of Appeals; (2) that two questions² would be reexamined in the light of any response which the Director might make in response to question No. 4; and (3) that defendant's objections to other questions³ should be sustained.

On July 16, 1969, the Court received a letter from J. Walter Yeagley, Esq., Assistant Attorney General of the United States, advising the Court that the United States opposed the suggestion that a deposition upon oral examination be taken of the Director, and that subject to the claim of privilege the Director would respond in writing to the questions which the Court had ruled to be relevant, material and proper under the circumstances:

1/ Nos. (3), (4), (5), (9), (12), (15), (16), (17), (18), (19), (20), (21), (22) and (29).

2/ Nos. (13) and (14).

3/ Nos. (1), (2), (6), (7), (8), (10), (11), (23), (24), (25), (26), (27), (28), (30), (31), (32), (33), (34) and (35).

On September 29, 1969, the Director responded in writing and under oath to all of the questions allowed by the Court. The Director made partial answers to questions (3), (5) and (12), and with respect to each of them stated that as Director of Central Intelligence, he determined that "it would be contrary to the interests of the security of the foreign intelligence activities of the United States to give further information" on the matters covered by the questions, and formally asserted the privileged status of such information. See footnote 4 for those questions and answers. All other questions were answered without any claim of privilege.

4/ "Question 3. You state categorically and conclusively that the counterintelligence officer referred to in paragraph 4 of your fifth Affidavit had a certain assigned function and was acting in accordance with his prescribed duties. What was the "assigned function" and what were the "prescribed duties" of the said counterintelligence officer with reference to the statements made by Juri Raus against Erik Heine?

"Answer. As stated in my Affidavit of February 10, 1969, the counterintelligence officer's function and duties, with reference to the statements made by Juri Raus concerning Erik Heine, were to safeguard the Agency's intelligence sources developed within Estonian emigre groups.

"As Director of Central Intelligence, I determine that it would be contrary to the interests of the security of the foreign intelligence activities of the United States to give further information as to the assigned counterintelligence functions or the prescribed duties of the counterintelligence officer referred to in paragraph 4 of my Affidavit of February 10, 1969, and, accordingly, pursuant to the authority vested in me as Director of Central Intelligence, I formally assert the privileged status of such information and respectfully decline to give further information in answer to question 3."

"Question 5. In paragraph 5 of your fifth Affidavit, you allege that the entire matter was reviewed by you in December of 1964, and then as Deputy Director with responsibility for all Agency counterintelligence operations, you ratified and approved the action taken by the counterintelligence officer who instructed Juri Raus to warn members of the Estonian emigre groups that Erik Heine was

On October 17, 1969, another formal hearing was held, at which plaintiff pressed his request to take the oral deposition of the Director, and defendant argued that the answers to the written interrogatories gave all the information which could be obtained by an oral deposition, because the three claims of privilege would have to be sustained on oral depositions.

The Court repeatedly asked counsel for plaintiff what information they wished to obtain in addition to that included in the Director's affidavits, particularly the affidavits of

4/ (continued)

a Soviet Intelligence Operative, a KGB agent. What prior authorization, instruction and legal statutory authority did the mentioned counterintelligence officer have for taking his stated action prior to your subsequent ratification?

"Answer. In paragraph 4 of my Affidavit of February 10, 1969, I stated that the counterintelligence officer responsible for safeguarding sources of intelligence developed within Estonian emigre groups, acting in accordance with his prescribed duties, instructed Juri Raus to warn members of Estonian emigre groups that Erik Heine was a Soviet intelligence operative, a KGB agent.

"As Director of Central Intelligence, I determine that it would be contrary to the interests of the security of the foreign intelligence activities of the United States to give further information concerning the prior authorization or instruction to the counterintelligence officer referred to in paragraph 5 of my Affidavit of February 10, 1969, other than that provided in my answer to question 3, and, accordingly, pursuant to the authority vested in me as Director of Central Intelligence, I formally assert the privileged status of such information and respectfully decline to give further information in answer to question 5."

"Question 12. What was the grade and salary of the counterintelligence officer referred to in paragraph 4 of your fifth Affidavit at the time he instructed Juri Raus to warn members of the Estonian emigre groups that Erik Heine was a Soviet intelligence operative, a KGB agent?

"Answer. As stated in my answer to question 9, the counterintelligence officer in question was, at all times complained of, a full-time staff employee of the Agency. He was paid annual compensation at a rate in accordance with the Classification Act Amendments of 1962.

"As Director of Central Intelligence, I determine that it would be contrary to the interests of the security of the foreign intelligence activities of the United States to give any information

February 10, 1969 and April 2, 1969, and in his answers to those interrogatories which the Court required him to answer. Aside from the matters on which the Director claimed privilege, counsel for plaintiffs did not suggest any other questions, but elected to stand on the record. This Court, therefore, must determine (1) whether the claims of privilege asserted by the Director with respect to three questions were properly asserted, and (2) whether the facts stated in the affidavits and answers to interrogatories meet the requirements specified by the Fourth Circuit for the entry of a summary judgment. See 399 F.2d at 791, quoted above.

The Director's affidavit of February 10, 1969, read in pertinent part as follows (the matter in italics in paragraph 4 was added by the affidavit of April 2, 1969):

"3. On those occasions specified in paragraphs 5, 6 and 7 of the complaint filed in this action, as a Deputy Director of the Agency, I was charged by the Director of Central Intelligence, with the specific responsibility, among others, for the conduct of the Agency's counterintelligence operations, the purpose of which is to protect intelligence activities, sources and methods against the operations of foreign intelligence services.

"4. Prior to November 9, 1963, this Agency through confidential intelligence sources available to it received certain information concerning Eerik Heine which was analyzed and evaluated by counterintelligence officers responsible to me,

4/ (continued)

regarding the grade and salary of the counterintelligence officer in question, and, accordingly, pursuant to the authority vested in me as Director of Central Intelligence, I formally assert the privileged status of such information and respectfully decline to give further information in answer to question 12."

who reached the conclusion that Eerik Heine was a dispatched Soviet intelligence operative, a KGB agent. In the performance of his assigned counterintelligence function, the counterintelligence officer responsible for safeguarding sources of intelligence developed within Estonian emigre groups, acting in accordance with his prescribed duties, instructed Juri Raus to warn members of the Estonian emigre groups that Eerik Heine was a Soviet intelligence operative, a KGB agent. The counterintelligence officer referred in the second sentence of the said paragraph 4 was one of the counterintelligence officers referred to in the first sentence of that paragraph.

"5. After initiation of the present suit, the entire matter was reviewed by me personally as a Deputy Director of the Agency. In December 1964, acting in my capacity as the said Deputy Director with responsibility for all Agency counterintelligence operations, I ratified and approved the action taken by the counterintelligence officer who instructed Juri Raus to warn members of the Estonian emigre groups that Eerik Heine was a Soviet intelligence operative, a KGB agent. In so ratifying and approving, I acted pursuant to the authority vested in me by the then Director of Central Intelligence. In my present capacity as Director of Central Intelligence, I now affirm that appropriate authority was vested in the said Deputy Director by the then Director of Central Intelligence to authorize, approve, or ratify the instructions given to Juri Raus. The several affidavits which I have provided the Court in this matter, in my capacity as the Deputy Director of Central Intelligence, were intended as ratification and approval of said instructions.

"6. Aside from identifying my participation in the Agency decisions concerning Eerik Heine, as set forth herein, I have determined, pursuant to my statutory responsibilities as Director of Central Intelligence, that it would be contrary to the best interests of the United States to disclose the identity of the counterintelligence officer who instructed Juri Raus as described in paragraph 4 hereof, since such disclosure could either destroy his utility to the Agency or pose a serious hazard to his safety."

The answers to interrogatories which the Court required the Director to answer gave in greater detail the information contained in the affidavits. The three questions with respect

to which the Director claimed privilege and his answers to those questions are set out in footnote 4 above.

1. Those claims of privilege must be sustained under the rule announced in United States v. Reynolds, 345 U.S. 1, 7-8, quoted and followed by the Fourth Circuit in section I of its opinion in this case, 399 F.2d at 788.

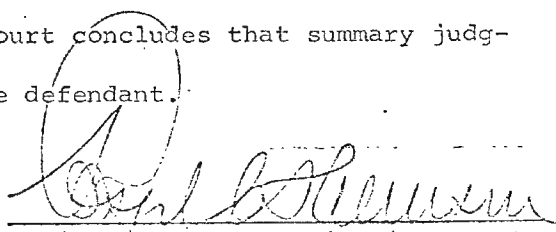
2. The Director's affidavit, quoted above, supported by his answers to interrogatories, shows:

(a) that the instructions to Raus were given by a subordinate official of the Agency, authorized to do so, and acting in the course of his prescribed duties and not by an unauthorized underling; and

(b) that Helms, as Deputy Director of the Agency in December, 1964, was authorized to and did ratify and approve the action taken by the counterintelligence officer who instructed Juri Raus to warn members of the Estonian emigre groups that Eerik Heine was a Soviet intelligence operative, a KGB agent.

It is unnecessary to consider whether the reiterated approval of the instructions by Helms as the present Director would be sufficient.

Having made the additional, limited inquiry directed by the Fourth Circuit, this Court concludes that summary judgment should be entered for the defendant.


Chief Judge, U.S. District Court

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been keeping in my file.

Then, I have just and handed to me this morning something that I have not had an opportunity to read, but which I take it is the proposed order from the plaintiff. I have not read it, but, as I understand it from plaintiff's counsel, is intended to be a summary of the order that Mr. Connolly had plus an order that the deposition of Mr. Helms be taken.

It refers to Mr. Helms' answers and apparently feels that they are inadequate in certain respects.

Is that not the only thing that is before me?

MR. STANFORD: No, Your Honor.

I think that there was never an idea on our part, in viewing the transcript of our lengthy June 6th hearing, when the court did indicate that we would have the right to have cross-examination -- I think it is on 35 of that transcript, page 35 -- that we would be able to pursue cross-examination. So that we had arrived at a point, after the objections had been made and sustained in some cases and overruled in others, to have the initial general areas of questions before the court, Mr. Helms, to begin a deposition.

Since the court had previously on June 6th indicated that there would be cross-examination possible and in view of the fact that a substantial number of these general-area questions were not objected to with regard to the invasion of privacy interests -- as a matter of fact, I believe only three

of them were truncated with that shield -- it would appear that we could pursue those general areas in a deposition.

From the first time, there has been no undercutting of those particular areas, and it would seem entirely appropriate to pursue the deposition, which the court in its June hearing indicated was correct with regard to the right for you to have a full cross-examination on this very narrow area.

THE COURT: What page was that?

MR. STANFORD: Page 35, Your Honor, I believe.

THE COURT: That was before he filed his answers.

MR. STANFORD: Yes, Your Honor.

But in a substantial number of those answers he did not indicate that there would be nothing further. Those were answers to the initial questions which were given gratuitously, since we proposed them as general question areas to be pursued, and not merely interrogatories, written interrogatories, to be answered.

Since they are answered, we do wish to cross-examine and to go further than those particular answers. And since there is no indication from Mr. Helms that he would not answer the last question, I see no reason why we cannot pursue a deposition, as was originally intended.

THE COURT: Well, you got very full answers to the questions. I take it that this first order purports to set out the rulings that I made on objections to certain --

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EERIK HEINE

Plaintiff

v.

JURI RAUS

Defendant

Civil Action No. 15952

O R D E R

This cause came on for hearing before the Court on October 17, 1969 for the purpose of establishing the procedure in which further inquiry may be had and additional findings be made thereon in accordance with the conditional mandate in the remand of this case from the United States Court of Appeals for the Fourth Circuit.

That Court reversed and remanded this case on the ground that there was a permissible inference in the record before it "that the instructions (to Juri Raus to speak of the plaintiff as he did) were given by an unauthorized underling and that his action has never had the approval of a responsible official of the Agency having authority to issue or approve such instructions."

The Fourth Circuit further stated:

. . .if the plaintiff represents to the District Court serious reliance upon the inference, further inquiry may be had and additional findings made. The inquiry should be directed to the identity of the official within the Agency who authorized or approved the instructions to Raus. Disclosure of the identity of the individual who dealt with Raus is not required; the answer to be sought is whether or not the Director or a Deputy Director or a subordinate official, having authority to do so, authorized, approved or ratified the instructions.

Hand delivered by Stanford on October 17, 1969 immediately prior to the
Hearing set for 12 noon on that date.

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RASKAUSKAS

&

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ATTORNEYS AT LAW

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WASHINGTON, D. C. 20036

225-2790

At a preliminary informal conference held by the Court on February 10, 1969 with counsel for the parties and for the government, this Court received and noticed a statement filed by the plaintiff that he placed "serious reliance" upon the inference referred to in the appellate opinion. Plaintiff requested that he be permitted to take the deposition of the Director of the Central Intelligence Agency under the supervision of this Court in order to establish the factual basis for the inference. Counsel for the defendant exhibited an affidavit of Richard Helms, dated February 10, 1969, at the conference together with a proposed Motion for Summary Judgment. The Court reviewed the Helms affidavit and suggested that the same might be amplified by a further affidavit to qualify questions raised by certain statements therein. Counsel for the defendant and for the government agreed to request the Director of the Central Intelligence Agency for a further affidavit to clarify the questions raised by the Court. It was agreed that the plaintiff would not be required to file a responsive pleading to defendant's Motion for Summary Judgment until such time as the inquiry directed by the Court of Appeals was concluded. Upon discussion as to the nature of the questions sought to be put to Richard Helms on deposition by the plaintiff, the Court directed that the plaintiff reduce the general areas of his questions to writing so that more careful consideration could be given to them both by the proposed deponent and by the Court.

Thereafter, on February 15, 1969 the defendant filed a Motion for Summary Judgment, together with points and authorities

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and a supporting affidavit by Richard Helms dated February 10, 1969. On March 19, 1969, plaintiff submitted for consideration thirty-five (35) general questions in writing covering the general areas on which he proposed to depose Richard Helms. On April 3, 1969, defendant filed objections to the proposed deponent answering any of said questions, and on the same day, an additional affidavit from Richard Helms was filed, dated April 3, 1969, supplementing his previous affidavit of February 10, 1969. The United States filed a Statement on behalf of the Director and the Central Intelligence Agency concerning the questions proposed by the plaintiff to Richard Helms, advising the Court that the United States would await the ruling of the Court as to whether any of the proposed questions would be allowed, and if so, that a later determination be made as to whether or not it would be necessary for the Director of the Central Intelligence Agency to make an official claim of privilege on the ground of secrecy with respect to any of the information sought to be elicited through said questions.

On June 6, 1969, this cause came on to be heard at a formal hearing upon objections of the defendant to certain general questions which the plaintiff proposed to develop at a deposition of Richard Helms before this Court. The Court considered the plaintiff's questions seriatim and heard arguments of counsel thereon. Thereupon, subject to a further report from the United States as to whether the Director of the Central Intelligence Agency would file a claim of privilege against the disclosure of state secrets with respect to any of the proposed questions, and reserving ruling on the claim of privilege as to

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each of said proposed general questions, the Court ruled that plaintiff's general questions (3), (4), (5), (9), (12), (15), (16), (17), (18), (19), (20), (21), (22), and (29) were within the inquiry directed under the remand by the Court of Appeals. Questions (13) and (14) were to be re-examined in the light of any response which the Director might make to the general area of questioning in response to general question number (4). Defendant's objections to questions (1), (2), (6), (7), (8), (10), (11), (22), (23), (24), (25), (26), (27), (28), (30), (31), (32), (33), (34) and (35) are sustained.

Thereafter, on July 16, 1969, this Court received a letter from J. Walter Yeagley, Esquire, Assistant Attorney General of the United States, advising the Court that the United States strongly opposes the suggestion that a deposition upon oral examination be taken of the Director of the Central Intelligence Agency, and further advising the Court that subject to the claim of privilege, the Director respond in writing to the questions which the Court ruled to be relevant. On September 29, 1969, Richard Helms responded in writing and under oath to all of the questions allowed by the Court. Mr. Helms made partial answers to questions (3), (5), and (12), and he formally asserted the privilege status of further answer to said questions and declined to give further information to the same pursuant to the authority vested in him as Director of Central Intelligence. All other questions were answered without any claim of privilege.

The Court having considered the pleadings filed herein, the affidavits and answers of the Director of Central Intelligence, the communications of counsel both for the parties and

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for the government, and after hearing argument by counsel for the parties and for the government, and it appearing to the Court that the Director of Central Intelligence has not asserted a formal claim of privilege as to all of the proposed general questions of the plaintiff, it is therefore the opinion of the Court that a deposition under the supervision of this Court of the Director of Central Intelligence would facilitate the inquiry directed by the Court of Appeals on remand of this case, and accordingly,

IT IS ORDERED:

That the deposition of Richard Helms, the Director of Central Intelligence, be and the same is hereby ordered before this Court on the _____ day of _____, 1969, and shall begin with the general questions permitted under the Court's ruling of June 6, 1969, subject thereafter during the interrogation of the deponent to a formal claim of privilege by the deponent and a ruling thereon by the Court, and further subject to in camera inquiry should the same be necessary to safeguard the interest of the United States, and under such other and further protective measures as may appear appropriate to this Court.

CHIEF JUDGE
United States District Court

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Subject: Heine v. Raus - On Remand

September 30, 1969

Honorable Roszel C. Thomsen
Chief Judge, United States
District Court
District of Maryland
United States Courthouse
Baltimore, Maryland 21202

Re: Heine v. Raus C.A. No. 15952

Dear Judge Thomsen:

This is with further reference to my letter of July 16, 1969, concerning the written questions which were directed to the Director of Central Intelligence by the plaintiff in the captioned case.

Enclosed herewith are the written responses, under oath, of Mr. Richard Helms, Director of Central Intelligence, to each of the questions which were ruled by the Court to be relevant to the remand proceeding. As indicated below, a copy of Mr. Helm's answers are being mailed today to all counsel of record in the case.

Sincerely,

/s/ J. Walter Yeagley

J. WALTER YEAGLEY
Assistant Attorney General

cc: Paul R. Connolly, Esq.
Williams & Connolly
1000 Hill Building
Washington, D. C. 20006

E. Barrett Prettyman, Jr., Esq.
Hogan & Hartson
815 Connecticut Avenue, N. W.
Washington, D. C. 20006

cc: Mr Houston. CIA

- 2 -

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#7
29 Sep 1969IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EERIK HEINE,)

Plaintiff)

v.)

Civil Action No. 15952

JURI RAUS,)

Defendant)

ANSWERS OF RICHARD HELMS TO QUESTIONS
PROPOSED BY PLAINTIFF

Richard Helms, Director of Central Intelligence, being first duly sworn, and in accordance with the Court's rulings of June 6, 1969, makes answers to the below stated questions as follows:

✓ *Prescribed*

1. Question 3. You state categorically and conclusively that the counterintelligence officer referred to in paragraph 4 of your fifth Affidavit had a certain assigned function and was acting in accordance with his prescribed duties. What was the "assigned function" and what were the "prescribed duties" of the said counterintelligence officer with reference to the statements made by Juri Raus against Eerik Heine?

Answer

As stated in my Affidavit of February 10, 1969, the counterintelligence officer's function and duties, with reference to the statements made by Juri Raus concerning Eerik Heine, were to safeguard the Agency's intelligence sources developed within Estonian emigre groups.

As Director of Central Intelligence, I determine that it would be contrary to the interests of the security of the foreign intelligence activities of the United States to give further information as to the assigned counterintelligence functions or the prescribed duties of the counterintelligence officer.

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officer referred to in paragraph 4 of my Affidavit of February 10, 1969, and, accordingly, pursuant to the authority vested in me as Director of Central Intelligence, I formally assert the privileged status of such information and respectfully decline to give further information in answer to question 3.

2. Question 4. In paragraph 5 of your Affidavit of February 10, 1969, you state that the entire matter was reviewed by you personally as Deputy Director of the Agency. State specifically what was included in the entire matter which was reviewed.

Answer

I met with certain senior Agency counterintelligence officers. At that time I reviewed a written record prepared by them which set forth information concerning Eerik Heine as obtained by this Agency through confidential intelligence sources upon which was based their conclusion that he was a dispatched Soviet agent. Included in my review of this information and the discussion held with these Agency officers at that time was the instruction furnished to Raus that he should warn members of the Estonian emigre groups that Eerik Heine was a Soviet intelligence operative, a KGB agent, as given by the counterintelligence officer responsible for safeguarding sources of intelligence developed within Estonian emigre groups, together with the manner in which Raus had executed those instructions which were issued by said responsible counterintelligence officer. Upon concluding this review and discussion, and acting in my capacity as a then Deputy Director, with responsibility for all Agency counterintelligence operations, I ratified and approved the action taken by the counterintelligence officer who instructed Juri Raus to warn members of Estonian emigre groups that Eerik Heine was a Soviet intelligence operative, a KGB agent.

Page Two

3. Question 5. *Answer* In paragraph 5 of your fifth Affidavit, you allege that the entire matter was reviewed by you in December of 1964, and then as Deputy Director with responsibility for all Agency counterintelligence operations, you ratified and approved the action taken by the counterintelligence officer who instructed Juri Raus to warn members of the Estonian emigre groups that Eerik Heine was a Soviet Intelligence Operative, a KGB agent. What prior authorization, instruction and legal statutory authority did the mentioned counterintelligence officer have for taking his stated action prior to your subsequent ratification?

Answer

In paragraph 4 of my Affidavit of February 10, 1969, I stated that the counterintelligence officer responsible for safeguarding sources of intelligence developed within Estonian emigre groups, acting in accordance with his prescribed duties, instructed Juri Raus to warn members of Estonian emigre groups that Eerik Heine was a Soviet intelligence operative, a KGB agent.

As Director of Central Intelligence, I determine that it would be contrary to the interests of the security of the foreign intelligence activities of the United States to give further information concerning the prior authorization or instruction to the counterintelligence officer referred to in paragraph 5 of my Affidavit of February 10, 1969, other than that provided in my answer to question 3, and, accordingly, pursuant to the authority vested in me as Director of Central Intelligence, I formally assert the privileged status of such information and respectfully decline to give further information in answer to question 5.

4. Question 9. Was the counterintelligence officer referred to in paragraph 4 of your fifth Affidavit such an employee of the CIA, at any of

the times complained of, as to come under the provisions of the Central Intelligence Agency Retirement and Disability system?

Answer

No. The counterintelligence officer in question was, at all times complained of, a full-time staff employee of the Agency and was covered by the provisions of the Civil Service Retirement Act.

The Central Intelligence Agency Retirement Act of 1964 for Certain Employees was approved October 13, 1964.

5. Question 12. What was the grade and salary of the counterintelligence officer referred to in paragraph 4 of your fifth Affidavit at the time he instructed Juri Raus to warn members of the Estonian emigre groups that Eerik Heine was a Soviet intelligence operative, a KGB agent?

Answer

As stated in my answer to question 9, the counterintelligence officer in question was, at all times complained of, a full-time staff employee of the Agency. He was paid annual compensation at a rate in accordance with the Classification Act Amendments of 1962.

As Director of Central Intelligence, I determine that it would be contrary to the interests of the security of the foreign intelligence activities of the United States to give any information regarding the grade and salary of the counterintelligence officer in question, and, accordingly, pursuant to the authority vested in me as Director of Central Intelligence, I formally assert the privileged status of such information and respectfully decline to give further information in answer to question 12.

6. Question 15. When was Raus instructed to make the utterances of November 9, 1963?

Page Four

Answer

During the course of several meetings which occurred during late May and June 1963 between Raus and the counterintelligence officer referred to in paragraph 4 of my Affidavit of February 10, 1969.

7. Question 16. What was the instruction?

Answer

As I have stated in paragraph 4 of my Affidavit of February 10, 1969, Juri Raus was instructed to warn members of the Estonian emigre groups that Eerik Heine was a Soviet intelligence operative, a KGB agent.

8. Question 17. When was Raus instructed to make the utterance of July 4, 1964?

Answer

During the course of several meetings which occurred during late May and June 1963 between Raus and the counterintelligence officer referred to in paragraph 4 of my Affidavit of February 10, 1969.

9. Question 18. What was the instruction?

Answer

As I have stated in paragraph 4 of my Affidavit of February 10, 1969, Juri Raus was instructed to warn members of the Estonian emigre groups that Eerik Heine was a Soviet intelligence operative, a KGB agent.

10. Question 19. When was Raus instructed to make the utterance of September 4, 1964?

Answer

During the course of several meetings which occurred during late May and June 1963 between Raus and the counterintelligence officer referred to in paragraph 4 of my Affidavit of February 10, 1969.

11. Question 20. What was the instruction?

Answer

As I have stated in paragraph 4 of my Affidavit of February 10, 1969, Juri Raus was instructed to warn members of the Estonian emigre groups that Eerik Heine was a Soviet intelligence operative, a KGB agent.

12. Question 21. Was there any modification or change of the instruction or instructions?

Answer

No.

13. Question 22. If there was a modification or change of instruction or instructions, what was the basis or reason for such modification or change?

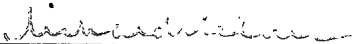
Answer

This question is considered not applicable in view of my answer to question 21.

14. Question 29. At any time prior to November 9, 1963, did the counterintelligence officers responsible to you, as stated in paragraph 4 of your February 10, 1969, Affidavit inform you as Deputy Director of CIA of their conclusion that Eerik Heine was a dispatched Soviet intelligence operative, a KGB agent?

Answer

To the best of my recollection, I was not personally informed prior to November 9, 1963 by the counterintelligence officers referred to in paragraph 4 of my Affidavit of February 10, 1969 of their conclusion that Eerik Heine was a dispatched Soviet intelligence operative, a KGB agent.


Richard Helms

STATE OF VIRGINIA)
) ss
COUNTY OF FAIRFAX)

Subscribed and Sworn to before me this 29th day of
September 1969.

Robert H. [illegible]
Notary Public

My commission expires 29 August 1973.

(SEAL)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EERIK HEINE,)	
Plaintiff,)	
v.)	CIVIL ACTION NO. 15952
JURI RAUS,)	
Defendant.)	

Baltimore, Maryland

Friday, June 6, 1969

The above-entitled matter came on for hearing
before His Honor Roszel C. Thomsen, Chief Judge, at 10:20
o'clock a.m.

A P P E A R A N C E S

(Same as heretofore noted.)

- - - -

TRANSCRIPT OF PROCEEDINGS

THE COURT: Good morning.

As I understand it, what we are here to do today is to consider whether the plaintiff should be allowed to ask Mr. Helms the general questions which they filed on March 20th. Particularly, we are here to consider the objections of the defendant to the interrogatories for the reasons stated by the defendant in their opposition.

If the court sustains the objections of the defendant to all of the interrogatories, the question of summary judgment would be a relatively simple argument, I should think. We could set a date for it, if plaintiff is not prepared to go ahead with it today.

On the other hand, if the court finds that some of the questions are permissible under the remand, or appropriate under the remand, then we have to have a further hearing or a further report from the government as to whether they are going to assert privilege with respect to any of those questions.

I think the record might show, also, that at the conference on February 10th, there was a conference about it after the affidavit of the director of the CIA, Mr. Helms, had been filed.

At that time, based on the arguments that were made then, the court suggested two questions which should be

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answered by Mr. Helms to clarify particularly paragraph 4, I believe it was, of his affidavit.

I understand that he has made a supplementary affidavit, or answer, to those questions which clarify the points which the court raised.

✓ I do not mean to prevent plaintiff from arguing that they are not sufficiently clarified, but I think it covered what the court asked.

Since we have objections by the defendant here to the interrogatories proposed by the plaintiff, do you want the defendant to open and state its position and then you answer it, or would plaintiff like to open and close on the propriety of the interrogatories?

Have you given any thought to how you were going to handle it?

MR. RASKAUSKAS: Your Honor, I don't think it would be inappropriate for defendant's counsel to argue their objections to the general questions which we proposed to ask on deposition.

However, I would have one general objection to their objections, and that would be on the ground that some of the things argued by the defendant here are personal to the director of the Central Intelligence Agency. And I do not think that the defendant or his counsel can interpose objections on behalf of the agency.

So I object to the form of the objections, coming through the defendant. Mr. Connolly and Mr. Prettyman have not yet entered appearances as counsel on behalf of the agency. I, therefore, do not think, as a matter of form, it is appropriate for them to argue on behalf of the agency.

The thrust of many of these objections is a statement of the agency's position. I think that position would be better taken by the director or by his own counsel.

✓ THE COURT: It seems to me, if the director has already taken a claim of privilege on a certain point and if that privilege was sustained by this court and the Fourth Circuit, the defendant can certainly refer to those facts as being matters which are really res judicata or law of the case at this time. And it is not necessary to go back and have the Secretary reassert his privilege, which has been asserted and sustained.

That is my understanding of the defendant's position.

I think, insofar as those are the facts, I would be disposed to agree with the defendant.

I have an open mind and would want to hear from both sides as to whether what I have just said applies to all of the questions, or only to some of them.

MR. CONNALLY: I think it is hard to deal in a vacuum, Your Honor.

THE COURT: That is right. I think we have to start with the first question and go right straight through. I think we can just take them one at a time.

Obviously, some of them come in groups. After we have had the first one of the group, we can either argue that one or argue the whole group.

MR. CONNALLY: Let me, then, start, Your Honor. I think that would be the orderly way, since the defendant has posed the objection.

THE COURT: All right.

MR. CONNALLY: I would like to make a prefatory statement as to my understanding of how we are here.

The Fourth Circuit, in disposing of this case in the first appeal, agreed with Your Honor's first opinion. It found one hole in the case. The opinion states that:

"The District Court" --

THE COURT: You say in the first appeal and in the first opinion. There has been only one appeal in the case, so it would be "the" appeal.

MR. CONNALLY: Yes, Your Honor.

THE COURT: All right.

MR. CONNALLY: "The District Court was quite correct in its allowance of the governmental claim of the privilege of secrecy," the court says.

defamation suits, we also agree generally with the District Court, its analysis of Barr v. Matteo and its reasoning, though we come to the conclusion that one more detail should have been supplied before entry of summary judgment."

THE COURT: I have a Xerox copy of the opinion, and I went over that last night.

MR. CONNOLLY: Yes, Your Honor.

At page 13 of the opinion, the court says:

"We conclude that the absolute privilege is available to Raus if his instructions were issued with the approval of the Director or of a subordinate authorized by the Director, in the subordinate's discretion, to issue such instructions, or if the giving of the instructions was subsequently ratified and approved by such an official."

THE COURT: Yes.

MR. CONNOLLY: And I think what comes next is very significant:

"Though the Director's affidavits state that Raus acted under instructions of the CIA, which certainly strongly implies that the instructions were given by, or with the approval of, a responsible, authorized official of the Agency and though the Director's appearance in the case carries with it a strong implication of his personal ratification and approval, it is said that on the present record there is still

a permissible inference that the instructions were given by

an unauthorized underling and that his action has never had the approval of a responsible official of the Agency having authority to issue or approve such instructions. The inference seems unlikely, but we cannot say it is foreclosed by the present record."

They go on to say:

". . . we will vacate the judgment so that, if the plaintiff represents to the District Court serious reliance upon the inference, further inquiry may be had and additional findings made."

Now, I think this is the scope of the inquiry, what comes next:

"The inquiry should be directed to the identity of the official within the Agency who authorized or approved the instructions to Raus. Disclosure of the identity of the individual who dealt with Raus is not required; the answer to be sought is whether or not the Director or a Deputy Director or a subordinate official, having authority to do so, authorized, approved or ratified the instructions."

It proceeds to say that, if the court thinks that it would violate state secrets, you can make appropriate inquiry in camera.

Now, I take it that that is the scope of the remand.

When we gathered together on February 10th, Mr.

Raskauskas for the plaintiff said that he wanted to take the depositions, and Your Honor asked him to inform you as to the kind of questions he wanted to put. We had a discussion that ranged over some considerable period of time.

My recollection is that many of those questions were not precisely aimed at the target. So, for the purpose of coming to grips with something definitive, Your Honor suggested that the kind of questions to be put be reduced to writing so that we could then measure the precise wording of the questions against the scope of the remand.

Following that conference, I wrote Your Honor a letter of February 14th, setting forth what I understood those proceedings were to be, and I do not think there is any dispute about it.

Mr. Raskauskas and Mr. Stanford, in due course, did submit a series of questions, and then I have directed objections to these questions on the grounds that all of them are immaterial, unnecessary, and not pertinent to the scope of the remand.

At page 1 of my objections I set forth the court's approval of the doctrine of absolute privilege and the Fourth Circuit's direction as to the scope of the remand.

I think we have, also, following Mr. Raskauskas' statement that he did rely upon the permissible inference that

court with another affidavit from Mr. Helms in which he says:

One, that a responsible counterintelligence officer, acting in accordance with his prescribed duties, instructed Juri Raus to make the warning with which we are familiar.

And that he, in his capacity as deputy director, reviewed the conduct of this officer and Raus and subsequently ratified it.

Your Honor had an inquiry at the February 10th hearing as to whether or not the subordinate officer who made the evaluation that Heine was a dispatch agent was, in fact, the same person who furnished Raus the instructions.

Paragraph 2 of Mr. Helms' affidavit of April 2nd responds to the inquiry which Your Honor made. He says:

"The counterintelligence officer referred [to] in the second sentence of the said paragraph 4 was one of the counterintelligence officers referred to in the first sentence of that paragraph."

So that is the state of the record at the moment. The present director of Central Intelligence has now stated that:

". . . the counterintelligence officer responsible for safeguarding sources of intelligence developed within Estonian emigre groups, acting in accordance with his prescribed duties, instructed Juri Raus to warn members of the

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Estonian emigre groups that Eerik Heine was a Soviet intelligence operative," and that the person who made those instructions was one of the persons who came, again, within the scope of his duties, to the conclusion, based upon sources of information available to the agency, that Heine was the kind of person described in the alleged defamatory statements.

That being so, and that being the state of the record, let's test the questions.

Question 1 begins at page 4. You will see my opposition repeats the question and then gives the answer.

Q #1

"Question 1. Cite and state the text of the statutory authority and the implementing authority upon which you rely for the allegations contained in paragraph 3 of your Affidavit of February 10, 1969, wherein you allege the purposes of the counterintelligence operations within the CIA."

I say:

"This question is objectionable because it is beyond the scope of the remand. The Court of Appeals has determined the extent of the Agency's authority in the present controversy."

Now, there shouldn't be any doubt about that. On pages 12 and 13 of the typewritten copy of your opinion, it is stated:

"The Court concludes that activities by the CIA to protect its foreign intelligence sources located in

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the United States are within the power granted by Congress to the CIA."

That is in your opinion.

THE COURT: Yes.

MR. CONNOLLY: And that, of course, is affirmed by the Fourth Circuit, certainly by implication, because they did not reverse on that ground.

THE COURT: Well, they said that, with the exception of this one item, summary judgment was properly granted, as I understand it, which must mean that they agree.

MR. CONNOLLY: So it is immaterial to find out what statutory authority the CIA had to act in this counter-intelligence field. We have been over that, and, therefore, I think this is an immaterial question.

THE COURT: All right.

MR. CONNOLLY: Shall we take it up one at a time, Your Honor?

THE COURT: Yes, I think we had better take it up one at a time. This is rather basic. Did the Fourth Circuit say anything on the subject?

I discussed this point more fully than they did, I believe.

MR. CONNOLLY: I think Your Honor is right; you did.

They said at page 9:

"The CIA and its Director" --

THE COURT: Wait a minute. Of what?

MR. CONNOLLY: The Court of Appeals' opinion. When they first filed it, Your Honor, they sent it out this way, and I just gave you a copy of it.

THE COURT: Well, then, somebody took it back.

MR. CONNOLLY: I have another copy of it right here.

THE COURT: Page what?

MR. CONNOLLY: Page 9.

THE COURT: All right.

MR. CONNOLLY: "The CIA and its Director are specifically charged with the duty and responsibility of protecting sources of foreign intelligence and methods of collecting such intelligence from unauthorized disclosure. That aliens within this country are sources of foreign intelligence, as claimed by the Director, has been recognized by the Congress. If the Director determines that an alien's entry for permanent residence in the United States is in the interest of national security or essential to the Agency's intelligence mission, the entry of the alien and his family is allowed though they would be otherwise inadmissible. Unlike Barr, who acted under no direction or specific authorization to issue press releases, action here to protect the integrity of sources of foreign intelligence was explicitly

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directed by Congress."

I think that is a more capsulized version of what you said, Your Honor.

THE COURT: And they cited the authorities for it.

MR. CONNOLLY: Correct.

THE COURT: It is on page 399 F. 2d 789, and the footnotes citing the statute are Footnotes 7 and 8 to the opinion of the Fourth Circuit on that page.

MR. CONNOLLY: It is, in our opinion, immaterial to inquire into the statutory authority to act in this field.

THE COURT: Well, he is talking about statutory authority for paragraph 3 of the affidavit. Now, let me find that affidavit.

The question deals with paragraph 3 of the affidavit: (OF FAR 19, 1969)

"On those occasions specified in paragraphs 5, 6 and 7 of the complaint filed in this action, as a Deputy Director of the Agency, I was charged by the Director of Central Intelligence, with the specific responsibility, among others, for the conduct of the Agency's counterintelligence operations, the purpose of which is to protect intelligence activities, sources and methods against the operations of foreign intelligence services."

I understand your point that it has been decided. Is there any question that that is the statutory authority? Let's see. Does the CIA claim it has authority under anything else other than that?

This is not a question of fact. This is a question of law, it seems to me. It is not something to ask the director. It is an attempt to reopen a question of law that has already been decided by this court and by the Fourth Circuit.

Now, what is the basis for your asking the director that question?

MR. RASKAUSKAS: Well, very frankly, one of the bases is that of a question of credibility. I would like to see if this statement that is made under oath can be backed up with statutory authority.

Now, this paragraph, Your Honor, was gratuitously made in this affidavit. If the question has heretofore been resolved, I don't see the necessity for it having been included in the affidavit.

If it has been, however, included in the affidavit, then it is certainly within the purview and right of the plaintiff to inquire into the credibility of this statement.

He has made an allegation here that the plaintiff asserts he cannot support by statutory authority, because the statutory authority heretofore submitted has been that the

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director is to protect intelligence sources and methods from unauthorized disclosure against the operations of foreign intelligence services.

Since this statement is made, I would like to find out the legal basis for this statement and also --

THE COURT: I do not think that is a matter for the Secretary, and I do not think it is a matter of credibility.

Does the CIA want to refer the Court to any statutes other than the one cited by the Fourth Circuit, or any cited by me, whether cited by the Fourth Circuit or not?

MR. KRAMER: Your Honor, they are the basic authorities.

THE COURT: The basic authority? You mean they are the only ones --

MR. HOUSTON: That we are relying on.

THE COURT: All right.

MR. STANFORD: So that if they do not have authority under the enunciation of 50 U. S. C. 403d(3) and 403g, then they would be --

MR. CONNOLLY: There is one other statute that I think should be called to your attention.

THE COURT: All right.

MR. CONNOLLY: This just points out that this is not a factual question. It is a law question. There is a

general section of Title V, United States Code, which permits an agency head to subdelegate authority throughout the agency.

THE COURT: That is a general principle. That is cited in one of the --

MR. CONNOLLY: Yes.

MR. RASKAUSKAS: That is cited in Judge Craven's dissent where he says that the delegation proffered by Richard Helms came long after the fact and really had no evidentiary efficaciousness.

MR. CONNOLLY: That is a dissent, of course.

THE COURT: Which section of Title V?

MR. CONNOLLY: I cite it later on in these pages, Your Honor.

THE COURT: I remember that you cited it, and I looked at it actually this morning before breakfast, but I did not bring the book.

MR. KRAMER: It is on page 4, Your Honor.

MR. CONNOLLY: It is on page 4, I am told.

THE COURT: 301 and 302?

MR. CONNOLLY: 301 and 302.

THE COURT: All right. I think it is a question of law, and I will -- also, it is my present inclination to think that it is a question of law which was decided by this court and affirmed by the Fourth Circuit, with some discussion.

All right, Question 2.

Q12
MR. CONNOLLY: "Cite and state the text of the statutory and implementing authority under which the counter-intelligence officer in paragraph 4 of your Affidavit of February 10, 1969, was charged with being 'responsible for safeguarding sources of intelligence developed within Estonian emigre groups.'"

I say this is immaterial also. "Appropriate Agency authority to act as questioned was recognized by the Court of Appeals" on the same basis as we dealt with in No. 1. And "if the intent of the interrogator is to inquire whether authority can be delegated within the Agency, the question calls for a legal conclusion which is inappropriate." However, the provisions of Title 5, Sections 301, 302, provide for subdelegation.

MR. RASKAUSKAS: The provisions of Title 5 provide for a subdelegation, but that indicates merely a potency. We do not know if that potency was activated by an actual delegation.

THE COURT: Well, he has said that it was. He has said that it was in his affidavit.

MR. STANFORD: That is the conclusion which we would like to penetrate.

THE COURT: You mean you want the regulations?

MR. STANFORD: No, we would like to get behind that to find out what is behind his conclusory statement.

THE COURT: Well, let me ask this. There are two strings to the bow here for the defendant:

One, that it was authorized; and, second, that it was ratified, as the Fourth Circuit said.

How are you possibly going to overcome ratification?

MR. RASKAUSKAS: Your Honor, by a searching inquiry to ascertain the facts and the truth, and this can be no better way accomplished than by taking the deposition of someone who has submitted six affidavits in this case.

Our position is basically that we have tried this case by affidavit, Your Honor. That the director of the CIA has been telling secrets, enough to put us out of court. But we have not had an opportunity to inquire of him about the disclosures he has made.

THE COURT: The Fourth Circuit ruled against you basically on that, after this court did, on that basic question. And I am bound by that, whether I agreed with it or not.

MR. RASKAUSKAS: Oh, I agree to that, Your Honor. Surely.

THE COURT: I think you are trying to reopen the whole case that has been decided, and I do not think that is

But, if we are talking about statutory authority, does the CIA or the government or the defendant rely upon any other statute than those which were mentioned in connection with No. 1?

MR. CONNOLLY: No, Your Honor. It is the same objection, basically.

THE COURT: I think it is the same point. All right.

MR. CONNOLLY: No. 3 ---

MR. STANFORD: Just for the record, No. 2 is, likewise, disallowed?

THE COURT: I am not ruling yet. I am not doing this off the cuff. I am hearing what you are saying, and I may express tentative views so that either side may amplify or dispute them before I make a final ruling. I am going to make some ruling in writing on this.

④ #4
MR. CONNOLLY: "3. You state categorically and conclusively that the counterintelligence officer referred to in paragraph 4 of your fifth Affidavit had a certain assigned function and was acting in accordance with his prescribed duties. What was the 'assigned function' and what were the 'prescribed duties' of the said counterintelligence officer with reference to the statements made by Juri Raus against Eerik Heine?"

Let's take a look at paragraph 4 of that affi-

davit.

It states:

"Prior to November 9, 1963, this Agency through confidential intelligence sources available to it received certain information concerning Erik Heine which was analyzed and evaluated by counterintelligence officers responsible to me, who reached the conclusion that Erik Heine was a dispatched Soviet intelligence operative, a KGB agent. In the performance of his assigned counterintelligence function, the counterintelligence officer responsible for safeguarding sources of intelligence developed within Estonian emigre groups, acting in accordance with his prescribed duties, instructed Juri Raus to warn members of the Estonian emigre groups that Erik Heine was a Soviet intelligence operative, a KGB agent."

Now, as I understand the question, the question is: He wants to know what the assigned function of this gentleman is generally, and what were his prescribed duties generally.

My objection is that:

"These questions are immaterial to the present inquiry. A description of what assigned function and prescribed duties of the officer might otherwise have is unnecessary. It is a sufficient answer that the task described in the affidavit was one of them."

That is the only significant inquiry, Your Honor.

"A further description may very well involve classified matter, since it calls for a disclosure of the Agency's organization and functions."

MR. PRETTYMAN: The paragraph really sets forth the function, so far as is applicable here.

THE COURT: Let me see. I want to see the opinion again, exactly what the opinion says on this point, the Fourth Circuit opinion.

I have it. I want to get the exact wording.

"We conclude that the absolute privilege is available to Raus if his instructions were issued with the approval of the Director or of a subordinate authorized by the Director, in the subordinate's discretion, to issue such instructions, or if the giving of the instructions was subsequently ratified and approved by such an official."

Now, forgetting the ratification for the moment, which may end the thing anyhow, what we are interested in here is whether the instructions were issued with the approval of the director.

Well, they were not with the direct approval of the director.

So they were issued, it is claimed, by "a subordinate authorized by the Director, in the subordinate's discretion, to issue such instructions".

But the question is: Was he an unauthorized

underling?

Now, the affidavit says:

"In the performance of his assigned counterintelligence function, the counterintelligence officer responsible for safeguarding sources of intelligence developed within Estonian emigre groups, acting in accordance with his prescribed duties, instructed Juri Raus to warn members of the Estonian emigre groups that Erik Heine was a Soviet intelligence operative".

Now, then, the second affidavit amplifies that and says:

"The counterintelligence officer referred [to] in the second sentence . . . was one of the counterintelligence officers referred to in the first sentence," just designating that much. He was one of the men who was gathering it. It was to show whether he knew what he was talking about. That was really the purpose of their question.

Now, with respect to this Question 3, I agree that the affidavit of the director says that:

"In the performance of his assigned counterintelligence function, the counterintelligence officer responsible for safeguarding sources of intelligence developed within Estonian emigre groups, acting in accordance with his prescribed duties, instructed Juri Raus to warn members

of the Estonian emigre groups".

I would think that cross-examination on that point would be within the scope of the remand, unless there is going to be a claim of privilege. This question seems to me to be quite different from the first two.

My inclination on three -- and I said a moment ago that I was going to put this in writing. It may be that the best thing to do is to go through it all, let me make my notes, and then tell you what my rulings will be, and dictate them, rather than wait to write them out.

I would like to know what either the defendant or the government has to say as to why this is not reasonable cross-examination of the director, on which he would have a right perhaps to claim privilege, or to assert the government's privilege.

MR. CONNOLLY: Let me start off first by saying that the privilege extends to the identity of agency personnel, their functions and duties.

THE COURT: Where is that?

MR. CONNOLLY: It is in the statute, itself. In Section 50, 403g, the statute provides:

"In the interest of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of sections 403(d)(3) of

be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provision of section 654 of Title 5, and the provisions of any other laws which require the publication or disclosure of the organization, functions, names, official titles, salaries, or the numbers of personnel employed by the Agency . . ."

THE COURT: Well, my present feeling is that, if the director claims -- that privilege can be asserted only by the United States. It cannot be asserted by the defendant.

MR. CONNOLLY: I quite agree, Your Honor.

9³ THE COURT: I think the statute says that, if he asserts the privilege, it must be respected.

Now, I made many rulings, sometimes sustaining the claim of privilege and sometimes not, as we went along. The Fourth Circuit, I take it, has affirmed those rulings. They have remanded on this relatively narrow question.

Q³ But unless you can show me that this particular privilege has already been asserted by the government and since the government is not today taking any position on whether it is asserting a privilege or not, I think the
Question 3 --

MR. PRETTYMAN: May I add one thing, Your Honor?

THE COURT: Yes.

MR. PRETTYMAN: The affidavit is really almost

in the words of what the opinion says is the duty of those in this area.

THE COURT: Of course, it does.

MR. PRETTYMAN: So long as the officer is identified as performing the very function which the court says that it is his duty to perform, what possible use is it to further explore the function that he had, other than that?

THE COURT: Because they may convince the court that he is lying.

MR. RASKAUSKAS: That is right.

THE COURT: That is their purpose in doing it.

Now, he can do one of two things:

He can either answer and have the court find that he is telling the truth, or have the court find that he is not telling the truth; or he can claim privilege. If he claims the privilege of the United States, I will say right now I think I must sustain it.

MR. CONNOLLY: Your Honor, this is a matter that has been dealt with in the past, when Juri Raus' deposition was taken, and questions were directed to Juri Raus asking him what his duties were, what his functions were. A claim of privilege was asserted by Mr. Houston on the basis of it.

THE COURT: That is right.

MR. CONNOLLY: And it was sustained.

THE COURT: That is right. But this is not Raus'

duties. This is the duties of the man who told him to do it. I do not know whether the Secretary is going to claim the privilege or not. All I can say is that it is proper cross-examination.

The affidavit certainly is sufficiently explicit to satisfy me. But the defendant is not bound to rely on -- the plaintiff is not bound to accept affidavits, and the Fourth Circuit does not limit it to affidavits.

MR. PRETTYMAN: Well, impliedly, I think they do, in the sense that they approve in this case the use of affidavits in view of the peculiar circumstances here.

THE COURT: They have approved it.

MR. STANFORD: Could we have also the --

THE COURT: If the Secretary is going to claim the privilege --

MR. STANFORD: You mean the director.

Q3 THE COURT: If the director is going to claim the privilege, I have to respect it.

If he does not claim the privilege, I think this is proper cross-examination. It would be proper cross-examination on a statement. If you offer an affidavit -- and I do not want to characterize it. The plaintiff characterized it as conclusory; you can characterize it as factual. I would be inclined to think that it is factual, although it is an ultimate fact. It certainly is not a conclusion of law. It is

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an ultimate fact.

MR. STANFORD: Your Honor, could we have it noted that this question is not a general one asking for the prescribed duties and assigned function of this man, this counterintelligence officer, but specifically with reference to the statements made by Juri Raus against Eerik Heine. So that we do not ask for the general duties or his general function here. It is right in the question, itself.

MR. CONNOLLY: Well, if it is limited to that, then it is answered by the affidavit.

THE COURT: Of course, it is answered by the affidavit. But they are entitled to cross-examine. It is answered in an ultimate fashion.

The answer is that he comes in and testifies here, or I will go over to Washington and hear it, if it is better, unless he claims his privilege. I will make these rulings as we go along. That is the only way we are ever going to get this done.

I will sustain the objections to Questions 1 and 2.

I will overrule the objections to 3. I will require the Secretary to answer the question. We will work out how it should be answered. But I will require the Secretary to answer the question unless the government asserts its privilege

Q 3
He is the one who would assert the governmental privilege.
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MR. STANFORD: Your Honor, if we could find out at the present time -- it may be a matter which is so black or white that Mr. Houston or Mr. Kramer could at this time, based upon the information they have, assert that privilege, so we would not have to wait.

THE COURT: You mean you would be willing to let Mr. Houston assert the privilege, rather than have it go back to Mr. Helms?

MR. STANFORD: And later have it ratified in an echo of what we have already done before.

THE COURT: All right. Then we will know where we stand.

MR. STANFORD: Yes. Then we would know where we stand.

THE COURT: I think that is a very helpful suggestion.

Q 3 MR. KRAMER: Your Honor, the government's position is that the government does not desire to assert privilege lightly. Therefore, we want to go back, study the question, and see whether it can be answered or whether a privilege should be asserted.

THE COURT: All right. I think that is a very appropriate attitude.

Q #3 The ruling is, I suppose, that the objection is

overruled, subject to the possible assertion of privilege
by the government.

All right. What is 4?

Q 4+ MR. CONNOLLY: "4. In paragraph 5 of your Affidavit of February 10, 1969, you state that the entire matter was reviewed by you personally as Deputy Director of the Agency. State specifically what was included in the entire matter which was reviewed."

My objection is:

"This question is argumentative. The statement referred to in the interrogatory, read in the context of the affidavit, is obviously clear of meaning. It refers to paragraph 4 and to the making of the alleged defamatory statements by Juri Raus concerning Eerik Heine set forth in the Complaint. No further information is necessary. Otherwise the comprehensiveness of the question would call for the disclosure of information which the Director is not required to furnish."

THE COURT: Well, it might or might not. I think that the ruling has to be the same there. It certainly is a flat statement. But this is the entire ratification, which is in this one sentence, is it not?

If this sentence stands, it ends the case in this court and in the Fourth Circuit.

Now, he says "the entire matter". "The entire

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 matter" is a very broad thing. He certainly can answer it.
It is capable of being answered in ways, it seems to me,
that do not disclose. He may say that he has reviewed the
matter by looking at the entire file, by looking at the in-
structions, by interviewing the people, or by whatever has
been done, and he has undertaken on that.

He says he has ratified it. I think that plain-
iffs are entitled to know how he reviewed it.

✓ If he ratified it, I suppose the court must sus-
 tain it, within what the limits are. Are the limits that
his action was utterly irrational, or that he acted without
doing anything?

6 124
If he said he interviewed the people, I am not
saying that is not entirely sufficient, and he does not have
to say what they told him.

I am not ruling that he has to say what they told
him. What I would like to know is whether he looked at the
file, or whether he talked to people, or whether he simply
said, "Mr. Houston, what ought I to do?"

Mr. Houston says, "Oh, you ought to ratify it,"
 so he ratified it.

I think the first two would be all right. I have
 some doubt about the last. So the same ruling as 3.

MR. RASKAUSKAS: Well, Your Honor, may I make a
 suggestion at this point?

THE COURT: Yes.

MR. RASKAUSKAS: Your Honor has ruled now that two of the four questions that the court has reviewed here might be inquired of the director. We do have about 35 questions here.

Now, of course, this litigation is important and serious enough to us that we are happy to sit here all night, if necessary, to go over these questions one by one. But it would seem that mechanically, if we were to set the notice of a deposition date, since Your Honor has ruled on these two questions --

THE COURT: But suppose he claims privilege. He can claim it in writing. I think he is likely to claim privilege on 3. I do not see how he can claim privilege on 4. I think that is true. He think he has to say what kind of a review he gave.

I do not mean that he has to say what he learned in the review.

MR. RASKAUSKAS: I was just thinking perhaps the more expeditious way -- and maybe it is not. We certainly do not want to abandon any of our --

THE COURT: No, but the point is this.

MR. RASKAUSKAS: (Continuing) --- rights here.

THE COURT: The government has said that they do

not wish to make a snap judgment on questions of privilege.

I think what they would like to know -- and it seems to me to the interests of everyone, including the public, that they know now -- what questions they are probably going to be asked to answer, subject to the possible claim of privilege, so that they can think it over.

I think we can go a great deal faster than we have gone. I particularly want to finish within three-quarters of an hour from now, if we can.

MR. RASKAUSKAS: As we are going along, I would like the record to show this, too:

That we posed these questions as general questions that we intended to ask. The dynamics of a deposition are such that questions growing out of answers --

44 THE COURT: Of course, but they will know the fields and the general nature. What I am saying here is that I would propose, in answer to 4, to let you ask him what sort of a review he made.

He would say, "I consulted so and so, and I read such and such."

Then, if you ask: What did those documents contain or what did they tell you, my present inclination is that, if they claim privilege, I will allow it. If they do not claim privilege, it might well be permissible.

MR. STANFORD: Your Honor, for another mechanical operation, I think it would be appropriate, in view of the

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fact that two questions of the four, Nos. 3 and 4, have been allowed as permissible questions unless the director does exercise his privilege of secrecy, that we do establish at the conclusion of this day the date for the taking of his deposition, and for which the government would come in if they are going to exercise that privilege on all questions.

THE COURT: All right. I think that is right.

MR. CONNOLLY: Shall we proceed, Your Honor?

THE COURT: Yes.

MR. CONNOLLY: "5. In paragraph 5 of your fifth Affidavit, you allege that the entire matter was reviewed by you in December of 1964, and then as Deputy Director with responsibility for all Agency action taken by the counter-intelligence officer who instructed Juri Raus to warn members of the Estonian emigre groups that Eerik Heine was a Soviet Intelligence Operative, a KGB agent. What prior authorization, instruction and legal statutory authority did the mentioned counterintelligence officer have for taking his stated action prior to your subsequent ratification?"

THE COURT: Well, you have stated what the statutory authority is.

MR. CONNOLLY: Yes.

THE COURT: I do not know whether the regulations, or how much, can be told. It would seem to me that, if there is a regulation that prescribes what the duties of these

people are -- I would be very much surprised if there was one, but if there is such a regulation that is public -- it ought to be cited.

Q5 If there is none, I think it is the same ruling as 3. I think it is within the scope of what comes back; and, if the answer is privilege, I think that ends it. If the answer is not privilege, I think they are entitled to know.

Qr "What prior authorization, instruction and legal statutory authority" -- I do not know what it is. If it is a regulation, it might be. If it is a matter of the routine working of the agency, I think it may well be privileged, or it may be simply answered that those were the duties that were assigned him. And that is it.

MR. CONNOLLY: And that is answered by the affidavit.

THE COURT: All right. But they do not have to take the affidavit.

You are assuming that the plaintiff and the court are bound to take the affidavit. Now, I understand that I did take affidavits on certain other subjects, and the Fourth Circuit approved my doing it.

I think on this point on remand, in view of what the Fourth Circuit has said, I think I should not rely on the

affidavit if it can be clarified further. And I do not think I should deny plaintiff the right of cross-examination on the matters that I think are relevant on remand except on the grounds of privilege. So there we are.

MR. CONNOLLY: May I direct Your Honor's attention to this statement in the Fourth Circuit's opinion.

THE COURT: Yes.

MR. CONNOLLY: "While the claim of secrecy prevents our obtaining a clear view of the entire scene, the Director's sworn, but undocumented, claims are enough to support the claim of governmental privilege. That ought to be enough when the statements are those of an official in so responsible an office and a requirement of further documentation and elaboration would violate the privilege of state secrets or greatly burden its exercise."

THE COURT: I think that is right.

MR. STANFORD: Your Honor, that is a state secret and --

THE COURT: And I am going to be liberal in my -- or maybe strict; I don't know whether strict or liberal; but I am going to recognize privilege as I decided I should do, and as I have been affirmed in doing.

However, I think that the remand did not say to take an affidavit. I think it is up to me to decide at this

we should take a deposition for the limited purposes, subject to the claim of privilege. I think the government understands that.

All right.

MR. CONNOLLY: We are at No. 6, Your Honor.

THE COURT: No. 6, all right.

MR. CONNOLLY: "Heretofore, in paragraph 8 of your second Affidavit of April 1, 1966, you allege that 'the defendant was furnished information concerning the plaintiff by the Central Intelligence Agency and was instructed to disseminate such information to members of the legion so as to protect the integrity of the Agency's foreign intelligence sources,' and in support of said Affidavit you filed Central Intelligence Agency Regulation HR-10-20, which states in paragraph (a) as follows:

"'AUTHORITY. Under the National Security Act of 1947 and the Central Intelligence Agency act of 1949, and under direction of the National Security Council, the Director of Central Intelligence is responsible for protecting intelligence sources and methods from unauthorized disclosure.'

"Is it not a correct statement that Central Intelligence Agency Regulation HR-10-20 is a regulation promulgated for the internal protection and control of information and intelligence within the Agency, and said regulation is not applicable to the general public and particularly Estonian

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emigre groups?"

THE COURT: I will hear from the plaintiff on that. It seems to me that matter has been decided, whether rightly or wrongly, by me and by the Fourth Circuit.

MR. RASKAUSKAS: I will submit it with that argument.

THE COURT: All right. Objection sustained.

Q #6
MR. CONNOLLY: "7. Explain how a public warning to the Estonian community that Eerik Heine was a KGB Agent did or could protect intelligence sources and methods from an unauthorized disclosure, when the members of said community are not under the stricture of CIA Regulation HR-10-20, and therefore speak under their First Amendment right rather than being restricted with reference to authorized or unauthorized disclosures."

THE COURT: All right. I will hear from the plaintiff.

MR. RASKAUSKAS: Well, this series of questions, Your Honor, this question, the last one, is on the basis of derivative authority.

These powers cannot exist at the bottom if they do not even exist at the top. That is our position.

Q #7
THE COURT: I understand. I will sustain the objection.

MR. CONNOLLY: "8. In paragraph 2 of your third

Affidavit of April 22, 1966, you state that 'the defendant was instructed to warn members of the Estonian emigre groups that Eerik Heine was a dispatched Soviet intelligence operative, a KGB agent. The purpose of this instruction was to protect the integrity of the Agency's foreign intelligence sources, existing within or developed through such groups, in accordance with the Agency's statutory responsibility to collect foreign intelligence and the statutory responsibility to protect foreign intelligence sources and methods.'

"a) Cite and state the text of these statutory authorities, and the text of the directive or directives implementing the same.

"b) Is it not a correct statement that the statutory responsibility is to protect foreign intelligence sources and methods from unauthorized disclosure?

"c) In the text of your Affidavit the words 'from unauthorized disclosure' have been consistently and systemically cropped from your reference to your statutory authority. Explain why these words of limitation to your authority 'from unauthorized disclosure' have been so consistently omitted."

THE COURT: Is that not the same thing?

MR. CONNOLLY: Yes, Your Honor.

THE COURT: It is the same point, is it not?

MR. CONNOLLY: Yes.

THE COURT: If the plaintiff has any other point to make --

MR. RASKAUSKAS: Question (c) there goes to the interpretation by the affiant, which we have a right to know, to support his affidavit, and the credibility. And we ask the question why the words "from unauthorized disclosure" in the code, why they have been systematically and consistently cropped.

MR. CONNOLLY: We have always repeated the text of the statute. So I do not think that your characterization that they have been systematically cropped is true, to begin with.

MR. RASKAUSKAS: When you say "we," are you speaking on behalf of the Central Intelligence Agency? I would like to get that point straightened out. I think he ought to put an appearance in, if he is representing the agency.

You know, that is a hard point with me. I mean I went to take the deposition of another lawyer. He told me he was co-counsel in the case, a gumshoe over in Washington. I would like to know who the lawyers are in the case and who they are representing.

THE COURT: Well, he is representing Mr. Raus, of course; but Mr. Raus was acting on behalf of the CIA in making this. Obviously, the relationships are very close.

MR. RASKAUSKAS: May I respectfully ask the court to instruct Mr. Connolly not to speak on behalf of the government? We strenuously object to that.

THE COURT: Well, he has the right to make the points on behalf of Mr. Raus. Since these words appear in your question and his objection to it, I do not think there is anything improper in his making the argument he did on behalf of Mr. Raus.

1. 8 At any rate, I will sustain the objection.

8 9 MR. CONNOLLY: "9. Was the counterintelligence officer referred to in paragraph 4 of your fifth Affidavit such an employee of the CIA, at any of the times complained of, as to come under the provisions of the Central Intelligence Agency Retirement and Disability system?"

THE COURT: What difference does that make, in view of my ruling and the Fourth Circuit's ruling, I believe, that he only had to be an employee of the United States?

MR. RASKAUSKAS: Well, I don't know who this counterintelligence officer is, whether he is somebody connected with one of these emigre groups or with that Legion of Estonian Merit, or something like that.

THE COURT: Well, that is right. Suppose it is true that Mr. Raus only has to be an employee of the United States to be entitled to the privilege, when the privilege

is asserted by the government.

Now, this is a question to try to find out something more about the man who gave him the instructions. Now, the man who gave him the instructions may be on the payroll of the CIA. He may be on the payroll of the Bureau of Public Roads. He may be on the payroll of any governmental agency as a regular employee, or he may be a man who is simply used from time to time.

If he is what is stated to be --

MR. STANFORD: He has to be someone whom the director can ratify his action or could authorize his action.

THE COURT: Well, that is right. But if he is an agent, if he is a subordinate in it, it does not matter whether he is on the payroll or not, if he is a part of the agency. Can they not have volunteer people?

MR. RASKAUSKAS: I don't know, Your Honor.

MR. STANFORD: I don't know.

THE COURT: Does the government want to make any statement about that, whether this question is material or not material?

MR. CONNOLLY: Before we answer that, can we come back to the inquiry of the Fourth Circuit?

THE COURT: They spoke of him as a counter-intelligence officer. That would imply to me that he is probably a government officer.

MR. CONNOLLY: All he needs to be is a subordinate official having authority to do so. It does not make any difference whether he belongs to this retirement association, or he works for this agency or that agency.

THE COURT: You say he has to be a government employee. I am not sure. Are you conceding --

MR. CONNOLLY: He has to be a subordinate official.

THE COURT: All right. He has to be a subordinate official.

MR. CONNOLLY: Yes, Your Honor.

THE COURT: Now, I do not know enough about the organization to know whether he might be a dollar-a-year man; he might be a man who is a voluntary official. I do not suppose that anybody is an official of the government without being a dollar-a-year man, or more. But he certainly does not have to be in the CIA retirement pool.

There has been talk here that they utilize people on other government payrolls for the purpose of their function.

MR. KRAMER: Your Honor, I think the government has already taken the position that the individual was an employee of the agency.

THE COURT: All right. He was an employee of the agency. This counterintelligence officer was an employee of the agency.

MR. STANFORD: In light of their characterization

of Raus as someone who was employed by the CIA and the fact that they very sharply never said that Raus was an employee of CIA, we would like to find out whether that same differentiation is made with this so-called counterintelligence --

MR. CONNOLLY: They may want to find that out, but it is not material on the remand.

THE COURT: Of course, it is --

MR. CONNOLLY: It is immaterial on the remand, Your Honor.

the probative value
THE COURT: It is relevant, but I am not sure it is material. I am not sure it is material until I hear what position the government takes. I think it is relevant. I am not yet ready to rule on its materiality.

MR. STANFORD: Oh, I think it would be very material, Your Honor, from the standpoint of the fact that Helms had the ability to ratify the actions of this man.

THE COURT: But your only question here is --

MR. STANFORD: And to authorize the actions of this man.

THE COURT: Your question is whether he was subject to the retirement and disability system of the CIA, isn't that right?

They may be willing to answer it. They may claim privilege. They may say it is immaterial.

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They will either answer it or claim privilege;

or, if they claim it is immaterial, they will have to give some statement showing why it is immaterial.

MR. CONNOLLY: Your Honor, can I interject here just a moment?

THE COURT: Yes.

MR. CONNOLLY: Let us take the most favorable response that he is not.

MR. STANFORD: That he is not.

MR. CONNOLLY: Suppose he answers no.

MR. STANFORD: Then we have the next step, and we go to the next area.

THE COURT: Then you go to the next question. This is a series of questions.

MR. STANFORD: Then we go to the next area.

MR. CONNOLLY: My point is that if no conclusion follows from a "no" answer, no permissible answer can follow from a negative answer, what is the materiality of the question?

MR. STANFORD: Then we would try to find out what --

THE COURT: I do not know whether it is material or not. I do not know whether it is material. The government can answer it. I think I made the point clear.

MR. KRAMER: Your Honor, I think we are prepared to state now that we think the question is completely im-

KRAMER

Q #9
material; that the individual was a staff employee of the agency.

THE COURT: Well, then, there is no reason that Mr. Helms cannot say so on cross-examination. He says so; that he was a staff employee; and, therefore, this question is immaterial.

If that is the answer, I think that is where I stop.

MR. CONNOLLY: And they can answer "yes".

THE COURT: He would not necessarily be subject to the retirement plan.

MR. HOUSTON: That is correct, Your Honor. He would not necessarily be subject to it.

THE COURT: Well, can you accept that as the answer now, or do you want that from Mr. Helms?

MR. RASKAUSKAS: Yes. We would like to take his deposition. You know, so far as materiality and relevance is concerned, on a deposition everything does not have to be material and relevant.

THE COURT: Of course, it does. On this one it does. This is not discovery. This is not discovery. We have gotten down to the nitty-gritty by this point.

Q #9
All right. The objection is overruled, subject to renewal. And the answer that has been suggested, the

court will say, would be a sufficient answer. I do not know

whether he is going to claim privilege or not. I think that this is not the issue, although it may be one minor element of an issue.

MR. RASKAUSKAS: What will we do if he claims privilege on this question?

MR. CONNOLLY: Let us cross that bridge when we come to it.

THE COURT: What you do is you take Mr. Houston's concession, and that is all you are going to get out of it, anyhow, I think. You take his concession. But, if they claim privilege, you still have his concession here, or his statement.

Q 19
MR. HOUSTON: I am really making the concession on the basis that we think the record fully supports that he was a staff employee, without any question.

THE COURT: I think so. When I say "concession," it was really a statement. I mean you take his answer and his statement as being in. If they claim privilege beyond that, the court, I think, should sustain it.

All right.

Q 10
MR. CONNOLLY: "10. Was Juri Raus such an employee of the CIA, at any of the times complained of, as to come under the provisions of the Central Intelligence Agency Retirement and Disability system?"

Now, this question, with respect to Juri Raus,

is immaterial to the present inquiry, because I think Your Honor has already ruled that it is.

THE COURT: Yes, I think that is covered by the decision. Objection sustained.

MR. CONNOLLY: "11. Was not the secrecy agreement executed by Juri Raus on May 29, 1963, one used for non-employees of the CIA who did not come under the purview of the Central Intelligence Agency Retirement and Disability system?"

THE COURT: It is the same point, I gather.

MR. CONNOLLY: It is the same point.

MR. RASKAUSKAS: Oh, not really, Your Honor. What we are trying to find out here is if Mr. Helms ratified something a complete outsider did, long after it was done.

THE COURT: You talk about complete outsider. They have said much more than that. He is not a complete outsider. We have already had findings in the opinion showing that he is not a complete outsider.

MR. STANFORD: Have we had findings of fact in regard to that, Your Honor?

MR. CONNOLLY: You know what you have had.

THE COURT: All right.

MR. CONNOLLY: "12. What was the grade and salary of the counterintelligence officer referred to in paragraph 4 of your fifth Affidavit at the time he instructed Juri Raus

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to warn members of the Estonian emigre groups that Erik Heine was a Soviet intelligence operative, a KGB agent?"

I say:

"This interrogatory is immaterial. The grade of Raus' instructor is not a matter of significance under the opinion of the Court of Appeals, 399 F.2d at 791. It is only necessary to establish, as does the Helms affidavit of February 10, 1969, that he was an authorized subordinate."

THE COURT: Well, that is exactly the same as 9,
and I think the same ruling and the same understanding as
with respect to No. 9.

All right.

Q 13 MR. CONNOLLY: "Question 13. On November 9, 1963, at a meeting of the Legion of Estonian Liberation, Inc., at 243 East 24th Street, New York, New York, while a discussion was taking place concerning problems which had arisen between the New York branch of the said organization and the national office, Juri Raus jumped up and shouted to those assembled at the meeting that Erik Heine was a Communist and a KGB agent, and that Juri Raus had been so advised by the FBI, and, further, that if anyone at the meeting did not believe him, they could check with the FBI. At the time Juri Raus made this statement he was seated at a table indulging in intoxicating beverages and under the influence of same. Did the foregoing utterances in the context in which they were

Q # 1 ✓
SUGGESTS
HELMES OR
CLAIM
PRIVILEGE

made by Juri Raus reflect the instructions given to him by the counterintelligence officer referred to in paragraph 4 of your fifth Affidavit? If not, state how said instructions differed."

MR. RASKAUSKAS: Mr. Helms has put in an affidavit saying that he ratified Juri Raus' actions after this suit was started, and we are asserting a fact -- we have previous affidavits in this file -- that Juri Raus was sitting around in New York at a meeting and drinking, and so forth, and in an intoxicated condition, and he made this utterance.

We want to know if Mr. Helms ratified that utterance.

THE COURT: The question is: He is being sued on a very narrow statement that Heine was a dispatched Soviet operator, a KGB agent.

Now, if he said that, the fact that he may have had a drink before he said it, or he may not have had a drink before he said it, seems to me immaterial.

I think, on the question of ratification, you are going to be allowed to ask what he did, and we will see what happens then.

This is a very loaded question. You are assuming that the man was drunk. And it may be that it is customary for the Estonians to take a sip of something when they are

common for my Scandinavian ancestors to have done it.

MR. CONNOLLY: Your ruling is that the objection is sustained?

THE COURT: Well, I --

MR. CONNOLLY: Certainly as drawn.

THE COURT: I will sustain the objection as drawn.

11 13
I think the question is just the narrow question that I said. A question directed at that, whether he was authorized to say that Eerik Heine was a Soviet intelligence operator, a KGB agent, or words to that effect, in substance, that is the issue in the case.

I take it the affidavit says that. If they want to say, "Do you really mean it" -- if we are talking about ratification, we are not talking about something that was necessarily authorized ahead of time.

So, when he looks at ratification, he looks at what was said.

MR. STANFORD: Your Honor, I think that question is a corollary to Question No. 4, which asks for exactly what he did review.

THE COURT: Yes, that is right. I think it is part of that. I think it is part of it. I do not think I can rule until we get to the point on that. This essentially runs along with 4.

Now, then, Question 14.

Q14 MR. CONNOLLY: "14. State whether your ratification included a ratification of the utterances made by Raus and of his conduct in the context of the above-mentioned situation on November 9, 1963."

THE COURT: Well, I will sustain it, as asked. Again, it is something which may be developed subject to the limitations that I put in, in connection with 4.

Q15 MR. CONNOLLY: "15. When was Raus instructed to make the utterances of November 9, 1963?"

I don't think that is --

THE COURT: Well --

MR. CONNOLLY: As long as it was given before he spoke. That has already been established by the prior affidavits that went to the Fourth Circuit.

MR. STANFORD: We want to get behind that a little bit, and I think it is appropriate to do so because of the fact that, otherwise, we take everything by affidavit. And this is a very essential matter. We are going to determine whether this was total ratification.

THE COURT: I think it is the same as No. 3. Well, let me say 3 and/or 4. I do not know how it is going to come in, because it might be ratification or it might be authority; and, again, subject to the claim of privilege. Q15 That is understood. These are the ones that they will have to consider privilege on.

Q 16 MR. CONNOLLY: No. 16 is:

"What was the instruction?"

I think that this is not material to the inquiry.

The inquiry is:

Was the officer who gave the instructions an authorized subordinate, and not what were they. We are past that.

MR. STANFORD: Your Honor, I think it is very essential to differentiate between whether Mr. Helms approved prior or, as he said, only ratified the instruction which was given, or the statements which were made, which may clearly be different.

I think, in order for our inquiry, it is appropriate to find out what instruction was given.

MR. PRETTYMAN: Your Honor, the only thing that they are suing on is the statement about his being a KGB agent. That is what they are objecting to. That is what he was instructed to say. And that is what Mr. Helms has ratified, Your Honor.

THE COURT: I think that it is not irrelevant;
+16 but I think it is, subject to the claim of privilege, something that can be inquired into.

He says that it was authorized. Now, the fact that he may have said something else for which he is not being sued, or the fact that he may have behaved in an

ungentlemanly fashion, is not this case. We have a narrow case.

But, within the narrow ranges of this case, I think I cannot rule with the defendant that it is immaterial.

MR. PRETTYMAN: If Your Honor please, what the instruction was has already been given in a number of prior affidavits --

THE COURT: Yes.

MR. PRETTYMAN: (Continuing) -- by Mr. Helms. That is all his question is.

THE COURT: I know. But the court has ordered that certain matters may be inquired into.

MR. CONNOLLY: A certain matter.

THE COURT: A certain matter.

MR. CONNOLLY: Yes, Your Honor.

THE COURT: But this is within that matter: whether the man who gave the instructions was authorized to give them.

MR. CONNOLLY: Right. But the instruction, what was the instruction, is already established.

THE COURT: Well, is it or is it not?

MR. CONNOLLY: It is established by the affidavits of Helms of April 1, 1966. Let's take a look at them.

MR. RASKAUSKAS: Then he will have no reticence to say it and admit it in his deposition, if we are going to

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take his deposition.

MR. CONNOLLY: Why make a big issue out of it?

MR. RASKAUSKAS: Let him say it again one more time.

THE COURT: I think that they can ask a man: Do you say this now.

MR. CONNOLLY: Nobody is -- we are not denying --

THE COURT: They have not accepted it. They say they do not believe Mr. Helms, and they want to cross-examine him.

I think that, under the circumstances, a limited cross-examination is proper; but I am not going to let it run out beyond the limits of the remand; and I am going to allow him to claim privilege, appropriately, of course.

615
We come, now, to this question of when. You mean on what date was he instructed, or on what date was he told to make it? Your question is ambiguous.

MR. RASKAUSKAS: When he got the instruction.

THE COURT: Oh, when he got the instruction. All right.

MR. STANFORD: When the instruction took place, Your Honor.

THE COURT: Well, these are all the same. Is this not the same thing?

back to the complaint, the complaint alleges three separate slanderous statements on three separate dates. And these questions are asked with respect to each separate utterance.

MR. STANFORD: No. 17 is the July 4th statement, Your Honor.

THE COURT: Are they not all substantially the same?

MR. CONNOLLY: Certainly, the same statement was made.

THE COURT: The same statement.

MR. CONNOLLY: It was just made to three different people.

THE COURT: Yes, substantially the same statement.

MR. STANFORD: But there may have been a re-instruction subsequent thereto.

THE COURT: Well, the question that they are entitled to ask, it would seem to me -- and we are talking, now, from 16 all the way through 20 and 21 --

MR. CONNOLLY: I want to be heard on 21 and 22, Your Honor.

THE COURT: All right. Well, let us take 20. Those are all the same, claiming authorization. The question is simply: Was he authorized to make it once, or more than once; and, if it was ratified, did he ratify each one of them.

I think he can answer that yes or no.

Q 21

All right. Now, what is the trouble with 21?

MR. CONNOLLY: "Was there any modification or change of the instruction or instructions?"

I say this is objectionable, unnecessary and immaterial. All of the affidavits furnished by Mr. Helms have referred to "instructions" as a single entity.

THE COURT: Well, then, he answers and says so.

MR. CONNOLLY: We are really retrying the issues that have already been litigated and have been found sufficient by the Fourth Circuit.

MR. RASKAUSKAS: Not necessarily. It might come out that Mr. Helms ratified this and stopped it the same day.

THE COURT: If you want to give up any reliance on ratification, I think you are all right. I think on authority, the question of authority may well be narrower than the question of ratification, in view of what has already happened.

But you are not abandoning ratification, are you?

MR. CONNOLLY: Of course not.

THE COURT: All right. Well, then, I think the questions may be asked, and the court will try to keep them in mind.

Q 22 ✓

I think 22 is the same.

I am not sure they are entitled to ask 23.

Q v 3
MR. CONNOLLY: That is completely immaterial.

THE COURT: I think I will have to sustain 23.

I do not think that is within the remand, and I am not sure it would be admissible, anyhow. That is certainly not within the remand.

MR. CONNOLLY: "Is the instruction or instructions still in effect?"

THE COURT: That is not within the remand.

Q # 2 ✓
"No. 24. If the instruction or instructions are not still in effect, when were the same terminated?"

I will sustain that.

Now, then, Interrogatory 25 --

MR. CONNOLLY: It is the same.

MR. STANFORD: I don't know whether that is the same.

Q ✓
MR. CONNOLLY: No. 25 says:

"If the instruction or instructions were terminated, what was the basis or reason for the termination of such instruction or instructions?"

THE COURT: Well, suppose he says, "We found out it was untrue."

MR. STANFORD: I would love to hear that answer.

THE COURT: Well, of course, you would, because that should end the case. I mean it would vindicate your man. "We later found out that what we had done was a mistake.

We did it in good faith and in the interests of the United States, and we have since found it was mistaken."

If that is true, I should think the government would say so.

MR. STANFORD: I think there has been a sharp differentiation between what originally was said and what was said at the last conference we had with Your Honor on February 10th.

There was earlier a very strong assertion of the fact that this man was a KGB agent. The last time both Mr. Connolly and Mr. Prettyman said that maybe they were mistaken.

THE COURT: Well, I have no power to go beyond the appropriate --

MR. CONNOLLY: I don't think I ever said that. I deny that on the record, Mr. Stanford.

MR. RASKAUSKAS: You are entitled to make a denial.

MR. STANFORD: Well, I affirmatively assert, under oath or otherwise, that it was said at the last hearing. I know Mr. Prettyman said it, and I believe you did also, that they may be mistaken. I did not say that you said they were mistaken. I said may be mistaken.

THE COURT: My point is that that is not the issue in the case. If a mistake was made, I have no power to require its rectification. I can only say that, if the

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government knows that a mistake was made, if they say they told this man to say this but subsequent events have convinced them that it was wrong, it would certainly seem to me an appropriate ending for the entire case.

That is only assuming that is true. If the government still believes that that is true, of course, they cannot do that.

But I am only assuming that the government wants to act -- I will assume and continue to assume that the government wants to act -- honorably in this case; and that Mr. Helms is telling the truth.

MR. PRETTYMAN: Your Honor, if I may, I don't want a statement on the record relating to a statement made off the record to stand without my refuting it. I never said at the last meeting in any way that the government might have made a mistake here.

The discussion was that it made no difference if it had made a mistake. It was purely a legal argument, and it was in no way intended to convey the thought that a mistake had been made.

THE COURT: Well, I have no recollection of any admission that a mistake was made having been made by anyone connected with the government or by the defendant with respect to the alleged statement to the effect that he was to warn

members of the Estonian emigre groups that Heine was a Soviet

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intelligence operator, a KGB agent.

Now, there may have been some collateral matters that --

MR. STANFORD: Your Honor, I do not mean to state that Mr. Prettyman or Mr. Connolly said that they were now mistaken.

I said that there would seem to be a sharp differentiation between a positive assertion, which was at the very earliest stages of the first disclosure of the CIA's role in this, and the statement made last time, which may have been made as a legal argument, that maybe they were mistaken.

MR. PRETTYMAN: I never said maybe they were mistaken. I said that it made no difference whether they were or not.

MR. CONNOLLY: Mr. Stanford, I think you are trying to get an extra-judicial advantage to which you are not entitled. I think even you now are sorry you made the comment, so let us drop the subject.

MR. STANFORD: I don't think so.

THE COURT: I have no recollection of any admission of that sort having been made by either Mr. Prettyman or Mr. Connolly, or anyone connected with the government. I will stand by what I have said heretofore.

Q 26

Now, then, No. 26:

"Subsequent to November 9, 1963, has there been a re-analysis and re-evaluation by counterintelligence officers and any modification of the conclusion holding Erik Heine to be a dispatched Soviet intelligence operative, a KGB agent?"

That is the same question, and I will sustain the objection to that.

MR. CONNOLLY: No. 27 is the same.

THE COURT: 27 sustained, also.

MR. CONNOLLY: "No. 28. If there was such a reassessment or modification of the conclusion that Erik Heine was a KGB agent, state whether it was in part founded upon the international investigation made by Thomas A. LaVenia and Herbert A. Ruge, the representatives who investigated Erik Heine on behalf of Juri Raus or the CIA, or both."

THE COURT: Sustained.

Q 29

MR. CONNOLLY: "No. 29. At any time prior to November 9, 1963, did the counterintelligence officers responsible to you, as stated in paragraph 4 of your February 10, 1969, Affidavit inform you as Deputy Director of CIA of their conclusion that Erik Heine was a dispatched Soviet intelligence operative, a KGB agent?"

I say:

"This interrogatory is objectionable as irrelevant. It is not pertinent to the present inquiry to know whether the Deputy Director was personally informed of the findings of the counterintelligence officer referred to in paragraph 4 of Mr. Helms' affidavit of February 10, 1969. It is necessary to know only if the officer involved acts within his authority as established by prior grant or subsequent ratification."

THE COURT: I think that is the ruling of the Fourth Circuit. However, I would be inclined to say that it might be material on the question of ratification. I would be inclined to overrule that objection. It is a yes or no answer. By saying that it must be answered, I do not mean that I am going to allow that to open a door too far. I do not know what will happen.

MR. STANFORD: But, Your Honor, I think it is appropriate for our appeal, and I think it is entirely fair, to find out whether there is reliance solely upon ratification or upon authorization.

THE COURT: I think so.

MR. CONNOLLY: In all due deference, if you are talking about your appeal purposes, the affidavit that Mr. Helms submitted on February 10th goes both ways.

He does not state -- and I do not think that I would be permitted to argue -- that there was any personal authorization.

THE COURT: He can either say yes, no, or he indicates the answer is privileged. I do not know what he is going to say.

I think I cannot say at this time that the objection to 29 should be sustained. But I am simply saying that, in so ruling, I am not saying how far through the door you can go.

MR. CONNOLLY: I think Question 30 is not pertinent.

Q30
"State in detail the procedures and mechanics available within the Central Intelligence Agency and the National Security Council" -- how that got in here, I don't know -- "for the review of protected information to insure that said information is not improperly withheld or over-classified pursuant to your duties to protect information from unauthorized disclosure under CIA Regulation HR-10-20 and Title 50, United States Code, Sections 403(d) and 403(g)."

THE COURT: It seems to me that is for Congress and not for the court.

MR. RASKAUSKAS: Can I explain that question, Your Honor, very quickly?

THE COURT: Certainly.

MR. RASKAUSKAS: Here is the thing. Instead of just a bald assertion, when it is convenient, of secret, of the privilege, I would like to find out if there is any

review. I would like to ask Mr. Helms if he can declassify some of this stuff so we can get the truth in this case.

THE COURT: You can ask Mr. Helms that, but the court cannot require it. And that is the question. I am not a congressional committee. If that question were opened, we would have essentially a congressional committee hearing going on.

MR. RASKAUSKAS: Well, this question goes to whether there is some mechanical system on this business of classification of secret, or does it allow his unfettered judgment.

THE COURT: Perhaps Mr. Houston will tell you. All I have said and what the Fourth Circuit have said, as I understand it, is that on the record made, which you made -- and you have to stand by the record you have made up to the point except on remand -- they were justified.

My feeling is that when you are operating an international spy system, which is what you are doing, counter-intelligence to what everybody knows is an international spy system, somebody has to have authority.

Q31 MR. CONNOLLY: I think 31 is a corrolary of No. 30.

"State what review, if any, has been made by the Central Intelligence Agency, the National Security Council, or a member of the staff of the President of the United States,

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to insure that information has not been improperly or unnecessarily withheld in this case."

THE COURT: Sustained.

63 ✓
MR. CONNOLLY: "No. 32. State whether you or any member of your staff initiated any such review in this case in order to insure the fullest possible disclosure for the fairest trial to Erik Heine."

I think that's objectionable.

THE COURT: I think it is outside the range.

If they want to ask some question and Mr. Helms is willing to answer them, I have no objection to Mr. Helms answering them. But I do not think it is material to this case.

MR. STANFORD: Your Honor, anticipating that there will be an exercise of privilege, which I think is a very easily made assertion, I think it would be entirely appropriate, since Keynolds v. The United States and the other cases, to state that as much as possible should be disclosed to the court, when a privilege is exercised, in order that the court may determine whether the privilege is being properly exercised.

Now, here Your Honor has felt that any opening of the door at all might disclose the very thing --

THE COURT: I do not know whether your attack is against the CIA or not. There is no way in the world I can

tell whether this case or whether I can be 100 per cent sure
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that this case is 100 per cent bona fide. I do not make any aspersions to either of you gentlemen there. But, obviously, such a case as this would be a beautiful vehicle by this type of question to attack the CIA.

Now, this is not the place to attack the CIA. Congress is the place to attack the CIA and not this court.

MR. RASKAUSKAS: If I can say defensively, in response to the remarks Your Honor just made, when we got in this case, we did not know the CIA was in it. We had that other affidavit.

THE COURT: I understand, and I believe that. I say I do not mean the slightest aspersions on you. I believe it. On the other hand, I have to be aware of possibilities, and I cannot let this court become a field to do something which should be under other protections and under other judgments.

It seems to me it is Congress' judgment and not my judgment whether some of these questions should be answered.

All right.

Q 33434
MR. CONNOLLY: In Questions 33 and 34, Your Honor, they set forth a quote taken from the United States News and World Report, purporting to be an interview of a former director, Admiral Raborn, and asking for comments on that.

That is obviously calling for comments upon hearsay, and I

think would be objectionable.

THE COURT: I think that is not necessarily a sound objection, in my mind, the fact that it is hearsay. But it is contrary to what has been decided.

I mean this court has decided, and the Fourth Circuit has decided, that, aside from this one limitation, this was within the scope of the CIA. That is decided. That is law of the case.

MR. RASKAUSKAS: Well, Your Honor, it goes to this point:

The idea of prior approval as against ratification. That is the thrust of that Question 33 ✓

THE COURT: I do not see it at all. It is a question of whether it is within the scope of the CIA's duties.

MR. STANFORD: We wanted not to dig into the CIA methods unnecessarily, but to find out whether or not there is any ratification possible under the set-up of the CIA. If there is none possible, then this ratification subsequently would not be possible.

MR. PRETTYMAN: The Fourth Circuit has ruled on that.

THE COURT: The Fourth Circuit has asked whether there was ratification in fact. Certainly, flatly, they have

going to go behind it.

MR. STANFORD: The reason we want to go behind it is because the Fourth Circuit was factually informed -- or factually uninformed in this area.

THE COURT: Oh, the statute is broad enough. Anybody with common sense knows that -- well, I think I was right in my decision on the question of this being within the function of the CIA to protect its foreign sources.

Now, that is one point on which I have not the remotest doubt about the correctness of the decision.

MR. CONNOLLY: Neither does the Fourth Circuit. They affirmed it.

THE COURT: And I do not think the Fourth Circuit had any doubt.

MR. CONNOLLY: As to 33 and 34, again, we are getting two parts of the same subject.

THE COURT: Yes, 33 and 34 are the same. I will sustain 33 and 34.

MR. CONNOLLY: No. 35, I think this has to be read with some degree of care.

"In paragraph 2 of your fifth and most recent Affidavit of February 10, 1969, you alleged that you 'had concluded that the following circumstances may be disclosed concerning the Agency's action with respect to Eerik Heine.'

Plaintiff desires to direct questions to you concerning the

criteria employed by you in concluding that the information proffered by you in your said fifth Affidavit can now be divulged, in light of the allegations made by you in paragraph 10 in your second Affidavit of April 1, 1966, alleging that 'it would be contrary to the security interests of the United States for any further information pertaining to the use and employment of Juri Raus by the Agency in connection with Erik Meine to be disclosed, other than the disclosures already made in the defendant's answer, my own affidavits, and the defendant's affidavit, which I have read.'

Now, I think it is important to note, in considering that question, just what did the Fourth Circuit say about this permissible inference. That is why I read it very early.

It says:

"Though the Director's affidavits state that Raus acted under instructions of the CIA, which certainly strongly implies that the instructions were given by, or with the approval of, a responsible, authorized official of the Agency and though the Director's appearance in the case carries with it a strong implication of his personal ratification and approval, it is said that on the present record there is still a permissible inference that the instructions were given by an unauthorized underling and that his action has never had the approval of a responsible official of the

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Agency having authority to issue or approve such instructions. The inference seems unlikely, but we cannot say it is foreclosed by the present record."

What the director has done is say the inference is true: that the obvious intention of my previous affidavits was to disclose that the person who gave the instruction was an authorized employee of the agency.

THE COURT: Are you talking about 35? That is not what 35 is about. 35 is the criteria, in effect, that he applied in determining any further disclosure would be contrary to the --

MR. CONNOLLY: And what they attempt to do is that they attempt to say that there is an inconsistency between the affidavits. I see no inconsistency, and I suggest that the Fourth Circuit did not, either.

MR. RASKAUSKAS: I did not say anything about any inconsistency.

MR. CONNOLLY: You certainly do.

MR. RASKAUSKAS: I will tell you what this question is. I will explain it.

THE COURT: Let us hear what he has to say.

MR. RASKAUSKAS: I would like to explain this, so Mr. Connolly can understand, Your Honor. This question deals with the criteria employed by the director in giving a little more information as it seems to be needed. Really,

what it gets to is why could he not have divulged everything up to and including his sixth affidavit, I think, now, the first time around.

THE COURT: Because he thought he had done enough. He was treading new ground. The security interests of the United States are at issue, and the government was justified, I think, in being cautious in what they said.

Now, the number of the affidavits -- you speak of the sixth affidavit -- it was to clarify one matter that you raised. I have been trying to get you all the information that I thought you were properly entitled to in this case from the beginning to the end.

But it has to be done with the recognition, now approved by the Fourth Circuit, that there are certain public interests which are paramount.

Now, the question really here, so far as I can see, is whether you can go behind his statement that it would be contrary to the security interests of the United States for certain further information to be given.

I will be glad to see authorities, if you have any, that say I can go behind that.

MR. RASKAUSKAS: Well, this is a testing question under U. S. v. Reynolds.

MR. CONNOLLY: The Fourth Circuit said undocumented claims are enough to support the claim of governmental

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privilege.

031' THE COURT: I think I am bound by that. I think I must sustain the objection on that. You are just writing a brief for the Supreme Court. And let the record show very clearly here that these points which are being made now were not made in this way to me at the time I decided the case and at the time the case went up to the Fourth Circuit.

You have a right to argue these points, but some of these things were not raised before.

All right.

(Whereupon, at 12:05 o'clock p.m., the Court adjourned.)

I hereby certify that the foregoing is a true
and accurate transcript of the proceedings in the aforesaid
matter.

A handwritten signature in cursive script, reading "Toros Thomas Dourlian", is written over a horizontal line.

TOROS THOMAS DOURLIAN
Official Reporter

09C69-0786

OGC SUBJECT:
HEINE V. RAUS

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MARYLAND
BALTIMORE, MARYLAND 21202

ROSZEL C. THOMSEN
CHIEF JUDGE

April 24, 1969

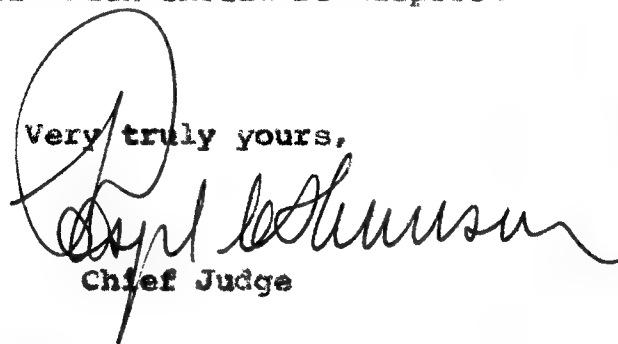
Paul W. Connolly, Esq.
Williams & Connolly
1000 Hill Building
Washington, D.C. 20006

Re: Heine v. Raus - Civil No. 15952

Dear Mr. Connolly:

The above captioned case has been scheduled on Friday, June 6, at 10:00 a.m., for hearing on objections to the questions proposed by the plaintiff and submitted under date of March 19, and any other pending matters which should be disposed of at that time.

Very truly yours,



Chief Judge

LEL

cc: Ernest C. Raskauskas, Esq.
cc: Robert J. Stanford, Esq.
cc: E. Barrett Prettyman, Jr., Esq.
cc: Lawrence R. Houston, Esq.
cc: Stephen H. Sachs, Esq., U. S. Attorney
cc: Clerk, U. S. District Court

STAT

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filed w/ Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EERIK HEINE,

Plaintiff

v.

JURI RAUS,

Defendant

Civil Action No. 15952

OBJECTIONS OF THE DEFENDANT TO
QUESTIONS PROPOSED BY PLAINTIFF TO
RICHARD HELMS

Statement of the Case:

The opinion of the Circuit Court of Appeals, 399 F.2d 785 (4th Cir. 1968), succinctly affirmed the principle adopted by this Court in its previous grant of summary judgment. The Court of Appeals said:

We conclude that the absolute privilege is available to Raus if his instructions were issued with the approval of the Director, or of a subordinate authorized by the Director, in the subordinate's discretion, to issue such instructions, or if the giving of the instructions were subsequently ratified and approved by such an official. 399 F.2d at 791

The case was remanded to conduct an inquiry for a narrow purpose:

The inquiry should be directed to the identity of the official within the Agency who authorized or approved the instructions to Raus. Disclosure of the identity of the individual who dealt with Raus is not required; the answer to be sought is whether or not the Director or a Deputy Director or a subordinate official, having authority to do so, authorized approval or ratified the instructions. (Emphasis supplied) 399 F.2d at 791.

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636-8565

Accordingly, the only question open for exploration is whether Raus' instructions were authorized or ratified^{1/} by an appropriate official.

The affidavit of Richard Helms, Director of Central Intelligence of February 10, 1969 states in response to the lacuna posed by the Court of Appeals (#5):

After initiation of the present suit, the entire matter was reviewed by me personally as a Deputy Director of the Agency. In December 1964, acting in my capacity as the said Deputy Director with responsibility for all Agency counterintelligence operations, I ratified and approved the action taken by the counterintelligence officer who instructed Juri Raus to warn members of the Estonian emigre groups that Eerik Heine was a Soviet intelligence operative, a KGB agent. (Emphasis supplied)

This clear, succinct statement of ratification should answer the inquiry posed by the Court of Appeals. The affidavit is of the same quality and character and from the same source as those other affidavits upon which this Court has previously acted, and which the Court of Appeals found sufficient to establish other facts. See, for example, 399 F.2d at 789-790.

However, the Helms affidavit of February 10, 1969 further stated (#4):

In the performance of his assigned counterintelligence functions, the counterintelligence officer responsible for safeguarding sources of intelligence developed within Estonian emigre groups, acting in accordance with his prescribed duties, instructed Juri Raus to warn members of the Estonian emigre groups that Eerik Heine was a Soviet intelligence operative, a KGB agent. (Emphasis supplied)

This, likewise, is a clear, unmistakable assertion that the subordinate official who gave Raus his instructions had authority to do so.

1/ The Court of Appeals opinion does not distinguish between whether the ratification took place before or after the institution of the action by the plaintiff, and we have been able to find no case which makes such a distinction in circumstances in any way comparable to those present in this case.

Upon the basis of this affidavit, there is no longer "a permissible inference that the instructions were given by an unauthorized underling and that his action has never had the approval of a responsible official of the Agency having authority to issue or approve such instructions." See 399 F.2d at 791.

Despite these circumstances, the plaintiff has stated a desire to depose the Director of Central Intelligence. At a prehearing conference on February 10, 1969, Chief Judge Thomsen required plaintiff's counsel to reduce to writing the questions which they desired to put to the Director.^{2/}

Upon a consideration of these questions, all are found to be objectionable, principally because they are not relevant to the subject matter of the remand, or because they seek to make inquiry into subject matter now foreclosed to plaintiff, either by virtue of the opinion of the Court of Appeals or of this Court.^{3/} It is to be remembered that the only relevant inquiry is to the authority of the officer who instructed Raus.^{4/} The plaintiff does not aim his questions at this target.

^{2/} At the conference, plaintiff's counsel had indicated a desire to expand their inquiry beyond the scope of the remand. It was because of this tendency that the Court required a written submission prior to authorizing any depositions -- or, indeed, prior to a consideration as to whether the Director could be deposed.

^{3/} This Court suggested that two questions could be raised with respect to the Helms affidavit of February 10, 1969, but the plaintiff's counsel has not seen fit to put either question. (See enclosure to letter of February 14, 1969 to Chief Judge Thomsen from Paul R. Connolly)

^{4/} Since the Court of Appeals has held that approval of the instructing officer's conduct is all that is required, whether it be found within the scope of his delegated powers or by subsequent ratification, the word "authority", as hereinafter used, will not distinguish between prior authorization and ratification.

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Consideration of the Individual Interrogatories:

1. Q. Cite and state the text of the statutory authority and the implementing authority upon which you rely for the allegations contained in paragraph 3 of your Affidavit of February 10, 1969, wherein you allege the purposes of the counterintelligence operations within the CIA.

A. This question is objectionable because it is beyond the scope of the remand. The Court of Appeals has determined the extent of the Agency's authority in the present controversy. 399 F.2d at 789.

The subject matter of the question is therefore immaterial. It is, moreover, objectionable because it seeks a legal conclusion.

2. Q. Cite and state the text of the statutory and implementing authority under which the counterintelligence officer in paragraph 4 of your Affidavit of February 10, 1969, was charged with being "responsible for safeguarding sources of intelligence developed within Estonian emigre groups."

A. The question is objectionable as not material to the inquiry. Appropriate Agency authority to act as questioned was recognized by the Court of Appeals. 399 F.2d at 789. However, if the intent of the interrogator is to inquiry whether authority can be delegated within the Agency, the question calls for a legal conclusion which is inappropriate. However, United States Code, Title 5, Sections 301, 302, clearly provides that intra-agency delegation is permissible.

3. Q. You state categorically and conclusively that the counterintelligence officer referred to in paragraph 4 of your fifth Affidavit had a certain assigned function and was

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acting in accordance with his prescribed duties. What was the "assigned function" and what were the "prescribed duties" of the said counterintelligence officer with reference to the statements made by Juri Raus against Eerik Heine?

A. These questions are immaterial to the present inquiry. A description of what assigned function and prescribed duties of the officer might otherwise have is unnecessary. It is a sufficient answer that the task described in the affidavit was one of them. A further description may very well involve classified matter, since it calls for a disclosure of the Agency's organization and functions.

4. Q. In paragraph 5 of your Affidavit of February 10, 1969, you state that the entire matter was reviewed by you personally as Deputy Director of the Agency. State specifically what was included in the entire matter which was reviewed.

A. This question is argumentative. The statement referred to in the interrogatory, read in the context of the affidavit, is obviously clear of meaning. It refers to paragraph 4 and to the making of the alleged defamatory statements by Juri Raus concerning Eerik Heine set forth in the Complaint. No further information is necessary. Otherwise the comprehensiveness of the question would call for the disclosure of information which the Director is not required to furnish. See 50 U.S.C. §403g.

5. Q. In paragraph 5 of your fifth Affidavit, you allege that the entire matter was reviewed by you in December of 1964, and then as Deputy Director with responsibility for all Agency action taken by the counterintelligence officer who instructed Juri Raus to warn members of the Estonian emigre groups

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that Eerik Heine was a Soviet Intelligence Operative, a KGB agent. What prior authorization, instruction and legal statutory authority did the mentioned counterintelligence office have for taking his stated action prior to your subsequent ratification?

A. This question is unnecessary and redundant. The only information which is required by the present proceeding is whether the officer involved had the authority to furnish the instruction Juri Raus was given. This information is furnished by paragraph 4 of the Helms affidavit of February 10, 1969. If the question were to be more broadly answered, it could require the disclosure of privileged information.

6. Q. Heretofore, in paragraph 8 of your second Affidavit of April 1, 1966, you allege that "the defendant was furnished information concerning the plaintiff by the Central Intelligence Agency and was instructed to disseminate such information to members of the legion so as to protect the integrity of the Agency's foreign intelligence sources," and in support of said Affidavit you filed Central Intelligence Agency Regulation HR-10-20, which states in paragraph (a) as follows:

"AUTHORITY. Under the National Security Act of 1947 and the Central Intelligence Agency Act of 1949, and under direction of the National Security Council, the Director of Central Intelligence is responsible for protecting intelligence sources and methods from unauthorized disclosure."

Is it not a correct statement that Central Intelligence Agency Regulation HR-10-20 is a regulation promulgated for the internal protection and control of information and intelligence within the Agency, and said regulation is not applicable to the general public and particularly Estonian emigre groups?

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A. This interrogatory is not pertinent to the present inquiry. The Agency's authority to act with respect to foreign emigre groups and its right to protect any intelligence received from this source has been recognized by the opinion of the Court of Appeals. 399 F.2d at 789-790. See also 261 F.Supp. at 576.

7. Q. Explain how a public warning to the Estonian community that Eerik Heine was a KGB Agent did or could protect intelligence sources and methods from an unauthorized disclosure, when the members of said community are not under the stricture of CIA Regulation HR-10-20, and therefore speak under their First Amendment right rather than being restricted with reference to authorized or unauthorized disclosures.

A. This question is not pertinent since it seeks to challenge the Agency's right to have given the instructions in the first instance. This is not a proper subject of inquiry, since that matter is settled by the opinion of the Court of Appeals. 399 F.2d at 789-790. See also 261 F.Supp. at 576.

8. Q. In paragraph 2 of your third Affidavit of April 22, 1966, you state that "the defendant was instructed to warn members of the Estonian emigre groups that Eerik Heine was a dispatched Soviet intelligence operative, a KGB agent. The purpose of this instruction was to protect the integrity of the Agency's foreign intelligence sources, existing within or developed through such groups, in accordance with the Agency's statutory responsibility to collect foreign intelligence and the statutory responsibility to protect foreign intelligence sources and methods."

a) Cite and state the text of these statutory authorities, and the text of the directive or directives implementing the same.

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b) Is it not a correct statement that the statutory responsibility is to protect foreign intelligence sources and methods from unauthorized disclosure.

c) In the text of your Affidavit the words "from unauthorized disclosure" have been consistently and systemically cropped from your reference to your statutory authority. Explain why these words of limitation to your authority "from unauthorized disclosure" have been so consistently omitted.

A. This interrogatory is likewise irrelevant in each of its three parts. The right of the Agency to act as it did, as set forth in the various affidavits, has been recognized by the Court of Appeals. 399 F.2d at 789-790. The only present, proper subject of inquiry is the authority of the precise officer who furnished the specific instructions. No aspect of No. 8 is relevant to that inquiry.

9. Q. Was the counterintelligence officer referred to in paragraph 4 of your fifth Affidavit such an employee of the CIA, at any of the times complained of, as to come under the provisions of the Central Intelligence Agency Retirement and Disability system?

A. The subject matter of this interrogatory is irrelevant. There is nothing in the Court of Appeals opinion which would suggest that the officer furnishing the instructions to Juri Raus might be required to be subject to any retirement or disability system. See 399 F.2d at 791. The lack of pertinency in such a question is further established by the prior ruling of the Court to the effect that even Raus himself was not required to be a salaried employee of the Central Intelligence Agency - only that he be an employee of the United States. 261 F.Supp. at 577.

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10. Q. Was Juri Raus such an employee of the CIA, at any of the times complained of, as to come under the provisions of the Central Intelligence Agency Retirement and Disability system?

A. This question is immaterial to the present inquiry for the same reasons as advanced in response to No. 9.

11. Q. Was not the secrecy agreement executed by Juri Raus on May 29, 1963, one used for non-employees of the CIA who did not come under the purview of the Central Intelligence Agency Retirement and Disability system?

A. This question is not material to the present inquiry. As this Court has previously ruled, it is only necessary that the individual involved be an employee of the United States, a fact now established, 261 F.Supp. at 575, 577.

12. Q. What was the grade and salary of the counter-intelligence officer referred to in paragraph 4 of your fifth Affidavit at the time he instructed Juri Raus to warn members of the Estonian emigre groups that Erik Heine was a Soviet intelligence operative, a KGB agent?

A. This interrogatory is immaterial. The grade of Raus' instructor is not a matter of significance under the opinion of the Court of Appeals, 399 F.2d at 791. It is only necessary to establish, as does the Helms affidavit of February 10, 1969, that he was an authorized subordinate.

13. Q. On November 9, 1963, at a meeting of the Legion of Estonian Liberation, Inc., at 243 East 24th Street, New York, New York, while a discussion was taking place concerning problems which had arisen between the New York branch of the said organization and the national office, Juri Raus jumped up and shouted to those assembled at the meeting that

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Eerik Heine was a Communist and a KGB agent, and that Juri Raus had been so advised by the FBI, and further, that if anyone at the meeting did not believe him, he could check with the FBI. At the time Juri Raus made this statement he was seated at a table indulging in intoxicating beverages and under the influence of the same. Did the foregoing utterances in the context in which they were made by Juri Raus reflect the instructions given to him by the counterintelligence officer referred to in paragraph 4 of your fifth Affidavit? If not, state how said instructions differed.

A. This question is not pertinent to the present inquiry. The only subject properly open for consideration is whether the instructing officer possessed sufficient authority to have instructed as he did. The Helms affidavit of February 10, 1969 establishes that he did (¶¶4,5).

14. Q. State whether your ratification included a ratification of the utterances made by Raus and of his conduct in the context of the above-mentioned situation on November 9, 1963.

A. The matters referred to in this question are not relevant. The only permissible inquiry is whether the statements set forth in the Complaint, when made, were either authorized or were ratified by an authorized officer of the Agency, 399 F.2d at 791. The affidavits of Richard Helms clearly establish both the fact of authority and ratification for the statements set forth in the Complaint.

15. Q. When was Raus instructed to make the utterances of November 9, 1963?

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A. This interrogatory is not pertinent to the present inquiry. The time when the instruction to Raus was given is not material so long as it was given before he spoke. This fact is established by the prior record, e.g., affidavits of Richard Helms of April 1, 1966 and April 22, 1966; Claim of Privilege by W. F. Raborn of April 28, 1966. See also 399 F.2d at 791.

16. Q. What was the instruction?

A. This question is not relevant to the present inquiry. Moreover, it is redundant because the nature of the instruction has been set forth repeatedly, and is to be found most recently in paragraph 4 of the affidavit of Richard Helms of February 10, 1969.

17. Q. When was Raus instructed to make the utterance of July 4, 1964?

A. This interrogatory is objectionable for the same reasons as advanced with respect to No. 15.

18. Q. What was the instruction?

A. This interrogatory is objectionable for the same reasons as advanced with respect to No. 16.

19. Q. When was Raus instructed to make the utterance of September 4, 1964?

A. This interrogatory is objectionable for the same reason set forth with respect to No. 15.

20. Q. What was the instruction?

A. This interrogatory is objectionable for the same reasons set forth with respect to No. 16.

21. Q. Was there any modification or change of the instruction or instructions?

A. This interrogatory is objectionable, unnecessary and immaterial. All the affidavits furnished by Richard Helms

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have referred to "instructions" as a single entity. There is no basis for inquiring whether there had been any change of instructions. Moreover, the scope of inquiry called for by the present proceeding does not include a re-examination of the nature of the instructions given to Raus, but simply the authority of the instructing officer.

22. Q. If there was a modification or change of instruction or instructions, what was the basis or reason for such modification or change?

A. This interrogatory is not pertinent to the inquiry and is therefore objectionable for the same reasons as given to No. 21.

23. Q. Is the instruction or instructions still in effect?

A. This interrogatory is not pertinent to the present inquiry and is, in fact, immaterial to the action as a whole.

24. Q. If the instruction or instructions are not still in effect, when were the same terminated?

A. This interrogatory is objectionable for the same reasons set forth with respect to No. 23.

25. Q. If the instruction or instructions were terminated, what was the basis or reason for the termination of such instruction or instructions?

A. This interrogatory is objectionable for the same reasons set forth with respect to No. 23.

26. Q. Subsequent to November 9, 1963, has there been a re-analysis and re-evaluation by counterintelligence officers and any modification of the conclusion holding Erik Heine to be a dispatched Soviet intelligence operative, a KGB agent?

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A. This interrogatory is irrelevant to the present inquiry. Whether Erik Heine is, in fact, "a dispatched Soviet intelligence operative, a KGB agent" is immaterial to the defense of absolute privilege upon which a previous summary judgment was entered and which is now sought to be re-entered. See 261 F.Supp. at 578 and 399 F.2d at 790-791.

27. Q. If so, when was said reassessment made and what was the basis therefor?

A. This interrogatory is objectionable for the same reasons stated with respect to No. 26.

28. Q. If there was such a reassessment or modification of the conclusion that Erik Heine was a KGB agent, state whether it was in part founded upon the international investigation made by Thomas A. LaVenia and Herbert A. Ruge, the representatives who investigated Erik Heine on behalf of Juri Raus or the CIA, or both.

A. This interrogatory is objectionable for the same reasons stated with respect to No. 26.

29. Q. At any time prior to November 9, 1963, did the counterintelligence officers responsible to you, as stated in paragraph 4 of your February 10, 1969, Affidavit inform you as Deputy Director of CIA of their conclusion that Erik Heine was a dispatched Soviet intelligence operative, a KGB agent?

A. This interrogatory is objectionable as irrelevant. It is not pertinent to the present inquiry to know whether the Deputy Director was personally informed of the findings of the counterintelligence officer referred to in paragraph 4 of Mr. Helms' affidavit of February 10, 1969. It is necessary to know only if the officer involved acted within his authority as established by prior grant or subsequent ratification. See 399 F.2d at 791.

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30. Q. State in detail the procedures and mechanics available within the Central Intelligence Agency and the National Security Council for the review of protected information to insure that said information is not improperly withheld or overclassified pursuant to your duties to protect information from unauthorized disclosure under CIA Regulation HR-10-20 and Title 50, United States Code, Sections 403(d) and 403(g).

A. This interrogatory is not pertinent to the present inquiry. It is beyond the scope of the remand to inquire as to whether the claim of testimonial privilege upon the question of state secrets has been properly advanced.

31. Q. State what review, if any, has been made by the Central Intelligence Agency, the National Security Council, or a member of the staff of the President of the United States, to insure that information has not been improperly or unnecessarily withheld in this case.

A. This interrogatory is objectionable for the same reasons stated with respect to No. 30.

32. Q. State whether you or any member of your staff initiated any such review in this case in order to insure the fullest possible disclosure for the fairest trial to Erik Heine.

A. This interrogatory is objectionable for the same reasons stated with respect to No. 30.

33. Q. In a copyright interview of Admiral William F. Rayborn [sic] in U. S. News and World Report, Vol. LXI, No. 3, distributed July 18, 1966, Admiral Rayborn [sic] is quoted as stating that any clandestine activities by the CIA must have prior approval - in detail - of a Committee of the National Security Council. State whether the counterintelligence officer issuing

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the instruction to Juri Raus to warn the emigre group had such prior approval in detail before the issuance of said instruction.

A. This interrogatory is objectionable in many respects: (1) It calls for a comment upon hearsay; (2) the interrogatory states the interrogator's argumentative conclusions as to what was said in a hearsay report, and (3) it is not pertinent to the scope of the present inquiry. The present inquiry is to be directed to this case alone and is to be limited to the question of whether the appropriate officer, when instructing Juri Raus, acted within his authority. 399 F.2d at 791.

34. Q. In the above-referenced interview of Admiral Rayborn [sic], the interviewer stated that he understood the CIA does not run any kind of clandestine operations within the United States and he asked Admiral Rayborn [sic] "is that left entirely to the FBI." Admiral Rayborn [sic] stated that "CIA has the responsibility for conducting operations outside the country; the FBI has as its principal mission the internal security of the United States and its possessions." In consideration of the foregoing statement and in further consideration of the stricture specifically directed against you and the Central Intelligence Agency in Title 50, 403(2)(d)(3) "provided, that the Agency shall have no police, subpoena, law enforcement powers, or internal security functions;", and did you at any time consult with the FBI prior to November 1963 concerning the alleged security threat by Erik Heine in the Estonian emigre groups in the United States?

A. This interrogatory is objectionable for some of the same reasons advanced with respect to No. 33, and it is furthermore not pertinent to the present inquiry, since it deals

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with whether the Agency acted with respect to Eerik Heine within the proper scope of its authority. This latter inquiry is now foreclosed by the opinions of this Court and the Court of Appeals in finding that the Agency's authority was adequate to embrace its efforts with respect to the plaintiff. See 261 F.Supp. at 576; 399 F.2d at 790.

35. Q. In paragraph 2 of your fifth and most recent Affidavit of February 10, 1969, you alleged that you "had concluded that the following circumstances may be disclosed concerning the Agency's action with respect to Eerik Heine." Plaintiff desires to direct questions to you concerning the criteria employed by you in concluding that the information proffered by you in your said fifth Affidavit can now be divulged, in light of the allegations made by you in paragraph 10 in your second Affidavit of April 1, 1966, alleging that "it would be contrary to the security interests of the United States for any further information pertaining to the use and employment of Juri Raus by the Agency in connection with Eerik Heine to be disclosed, other than the disclosures already made in the defendant's answer, my own affidavits, and the defendant's affidavit, which I have read."

A. This interrogatory is objectionable in that it would seek to question the Director or Deputy Director of Central Intelligence concerning the criteria employed by him to determine the extent of information which he might permit to be released to the public. Applicable statutory law precludes the type of interrogation contemplated by this interrogatory. 50 U.S.C. §403g provides in pertinent part:

... in the interest of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of sections 403(d)(3) of this Title that the

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Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provision of section 654 of Title 5, and the provisions of any other laws which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency. . . . (Emphasis supplied) 5/

Section 403(d)(3) also provides in pertinent part:

. . . That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure.

Therefore, since it would be beyond the authority of this Court to require other or different criteria than those employed by the Director himself, there is no point to the proposed inquiry, especially since there is no prohibition against the Director making ad hoc determinations. See, in this connection, CIA Regulation H.R. 10-20b set forth at p. 183 of the Joint Appendix filed in the Court of Appeals.

Accordingly, since the questions posed by the plaintiff are not material to the scope of inquiry called for upon remand, or are not properly put to the proposed witness, the objections to all of them should be sustained, and the Court should proceed to a disposition of the defendant's renewed motion for summary judgment upon the basis of the affidavits made in support thereof.

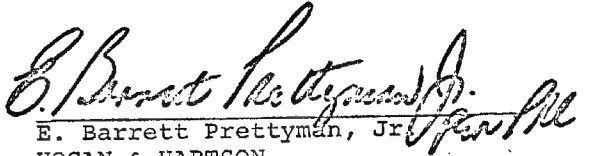
Respectfully submitted,



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5/ See 50 U.S.C.A. §410: "As used in this Act [The National Security Act of 1947, Act of July 26, 1947 c. 343] the term 'function' includes functions, powers, and duties."



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Attorneys for Defendant

CERTIFICATE OF SERVICE

A copy of the foregoing OBJECTIONS OF THE DEFENDANT TO QUESTIONS PROPOSED BY PLAINTIFF TO RICHARD HELMS was mailed, postage prepaid, this 3rd day of April, 1969 to Ernest C. Raskauskas, Esq., 1200 Eighteenth Street, N. W., Suite 607, Washington, D. C. 20036 and to Robert J. Stanford, Esq., 1825 K Street, N. W., Suite 707, Washington, D. C. 20006, Attorneys for Plaintiff; and to Lawrence R. Houston, Esq., General Counsel, Central Intelligence Agency, Washington, D. C., and to Arthur G. Murphy, Esq., First Ass't. United States Attorney, United States Courthouse, Baltimore, Maryland.



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Attorney for Defendant

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#6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EERIK HEINE,)

Plaintiff,)

v.)

Civil Action No. 15952

JURI RAUS,)

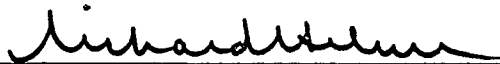
Defendant.)

AFFIDAVIT

Richard Helms, Director of Central Intelligence, first being duly sworn, deposes and says that:

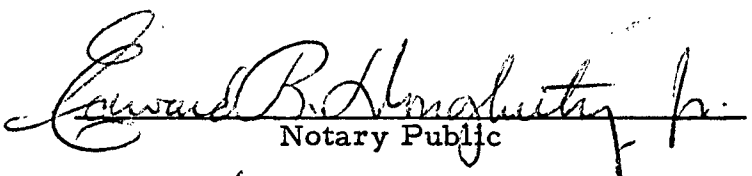
1. In Paragraph 4 of my Affidavit dated February 10, 1969, I stated: "Prior to November 9, 1963, this Agency through confidential intelligence sources available to it received certain information concerning Eerik Heine which was analyzed and evaluated by counterintelligence officers responsible to me, who reached the conclusion that Eerik Heine was a dispatched Soviet intelligence operative, a KGB agent. In the performance of his assigned counterintelligence function, the counterintelligence officer responsible for safeguarding sources of intelligence developed within Estonian emigre groups, acting in accordance with his prescribed duties, instructed Juri Raus to warn members of the Estonian emigre groups that Eerik Heine was a Soviet intelligence operative, a KGB agent."

2. The counterintelligence officer referred in the second sentence of the said paragraph 4 was one of the counterintelligence officers referred to in the first sentence of that paragraph.


Richard Helms

STATE OF VIRGINIA)
) ss.
COUNTY OF FAIRFAX)

Subscribed and sworn to before me this 2nd day of April, 1969.


Notary Public

My commission expires 9-24-69.

(SEAL)

CERTIFICATE OF SERVICE

A copy of the foregoing Affidavit of Richard Helms, Director of Central Intelligence, was mailed, postage prepaid, this 3rd day of April, 1969 to Ernest C. Raskauskas, Esq., 1200 Eighteenth Street, N. W., Suite 607, Washington, D. C. 20036 and to Robert J. Stanford, Esq., 1825 K Street, N. W., Suite 707, Washington, D. C. 20006, Attorneys for Plaintiff; and to Paul R. Connolly, Esq., Williams & Connolly, 1000 Hill Building, Washington, D. C. 20006, and E. Barrett Prettyman, Jr., Esq., Hogan & Hartson, 815 Connecticut Avenue, Washington, D. C. 20006, Attorneys for Defendant.

STEPHEN H. SACHS,
United States Attorney,
Attorney for the United States.

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EERIK HEINE,)
)
 Plaintiff,)
)
 v.) Civil Action No. 15952
)
 JURI RAUS,)
)
 Defendant.)

RICHARD HELMS, Director of Central Intelligence, being first duly sworn, deposes and says:

2. This Affidavit is in response to those suggestions, and I have concluded that the following circumstances may be disclosed concerning the Agency's actions with respect to Eerik Heine.

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operations, the purpose of which is to protect intelligence activities, sources and methods against the operations of foreign intelligence services.

4. Prior to November 9, 1963, this Agency through confidential intelligence sources available to it received certain information concerning Eerik Heine which was analyzed and evaluated by counterintelligence officers responsible to me, who reached the conclusion that Eerik Heine was a dispatched Soviet intelligence operative, a KGB agent. In the performance of his assigned counterintelligence function, the counterintelligence officer responsible for safeguarding sources of intelligence developed within Estonian emigre groups, acting in accordance with his prescribed duties, instructed Juri Raus to warn members of the Estonian emigre groups that Eerik Heine was a Soviet intelligence operative, a KGB agent.

5. After initiation of the present suit, the entire matter was reviewed by me personally as a Deputy Director of the Agency. In December 1964, acting in my capacity as the said Deputy Director with responsibility for all Agency counterintelligence operations, I ratified and approved the action taken by the counterintelligence officer who instructed Juri Raus to warn members of the Estonian emigre groups that Eerik Heine was a Soviet intelligence operative, a KGB agent. In so ratifying and approving, I acted pursuant to the authority vested in me by the then Director of Central Intelligence. In my present capacity as Director of Central Intelligence, I now affirm that appropriate authority was vested in the said Deputy Director by the then Director of Central Intelligence to authorize, approve, or ratify the instructions given to Juri Raus. The several affidavits which I have provided the Court in this matter, in my capacity as the Deputy Director of Central Intelligence, were intended as ratification and approval of said instructions.

6. Aside from identifying my participation in the Agency decisions concerning Eerik Heine, as set forth herein, I have determined, pursuant to my statutory responsibilities as Director of Central Intelligence, that it would be contrary to the best interests of the United States to disclose the identity of the counterintelligence officer who instructed Juri Raus as described in paragraph 4 hereof, since such disclosure could either destroy his utility to the Agency or pose a serious hazard to his safety.

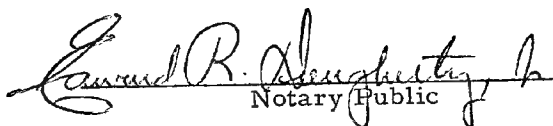


Richard Helms

STATE OF VIRGINIA)
) SS.
COUNTY OF FAIRFAX)

Subscribed and sworn to before me this 10th day of

February, 1969.


Notary Public

My commission expires 24 September 1969.

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January 21, 1969

C
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P
Y

Honorable Roszel C. Thomsen
Chief Judge
United States District Court
for the District of Maryland
United States Courthouse
Baltimore, Maryland

Re: Heine v. Raus, C.A. No. 15952

Dear Judge Thomsen:

In response to your secretary's telephone call of January 16, 1969, and Mr. Connolly's letter of January 17, concerning a proposed date for conference in the above case, I suggest Monday, February 10, 1969, at 4:00 p.m., in your Chambers as a convenient date for Mr. Stanford and me.

Subject to your approval and confirmation of this date, I further suggest that we await Mr. Connolly's return to the city on February 1 to ascertain whether his schedule and that of Mr. Prettyman can be suited to this date.

Very truly yours,

/s/
Ernest C. Raskauskas

KCR/fr

cc: Paul C. Connolly, Esq.
E. Barrett Prettyman, Jr., Esq.
Robert J. Stanford, Esq.

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7/16/67

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BERIK HEINE)

Plaintiff)

vs.)

Civil Action No. 15952

JURI RAUS)

Defendant)

STATEMENT OF PLAINTIFF, BY COUNSEL,
AFFIRMING RELIANCE ON INFERENCE AND REQUEST
FOR FURTHER INQUIRY AND ADDITIONAL FINDINGS

Plaintiff, Berik Heine, by his counsel, Ernest C. Raskauskas and Robert J. Stanford, represents to the Court that he seriously relies upon the inference that the actions and statements of Juri Raus, the defendant, against the plaintiff, were not with the approval of a responsible official of the Agency having authority to issue or approve such instructions.

Therefore, counsel for the plaintiff respectfully request that the Court permit plaintiff to make further inquiry into said inference and that additional findings be made, consistent with the instructions contained in the opinion of the United States Court of Appeals for the Fourth Circuit in No. 11,195.

Counsel for the plaintiff further request that the Court schedule a conference with counsel both for the plaintiff

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and for the defendant in order that the procedure for said requested inquiry and the nature and extent of the same may be determined.

Respectfully submitted,

/s/

Ernest C. Raskauskas
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Suite 607
Washington, D.C. 20036
223-2730

/s/

Robert J. Stanford
1825 K Street, N.W.
Suite 707
Washington, D.C. 20006
296-8870

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was by me mailed, postage prepaid, to Paul R. Connolly, Esq., Williams & Connolly, 839 Seventeenth Street, N.W., Washington, D.C. 20006, and E. Barrett Prettyman, Jr., Esq., Hogan & Hartson, 815 Connecticut Avenue, N.W., Washington, D.C. 20006, Attorneys for Defendant, this 7th day of January, 1969.

/s/

Ernest C. Raskauskas

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